

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 June 2011

Public Authority: West Yorkshire Police
Address: Police Headquarters
Laburnum Road
Wakefield
WF1 3QP

Summary

The complainant requested a copy of the document "*Managing Crime in Prisons*" from West Yorkshire Police. West Yorkshire Police disclosed some information, citing the exemption in section 31(1) (law enforcement) to withhold the remainder. The Commissioner has investigated and found the information was correctly withheld. However he identified a series of procedural shortcomings on the part of the public authority relating to delay (section 10) and failure to explain the application of exemptions (section 17). He requires no steps to be taken.

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.

Background

2. The requested information, "*Managing Crime in Prisons*", is a draft operational guidance document written by the Police Advisors Section to Her Majesty's Prison Service.

The Request

3. The complainant wrote to West Yorkshire Police on 9 June 2010: West Yorkshire Police advised that his letter was received on 15 June 2010. The complainant made the following request for information:

"Re: Investigations by you [Professional Standards Department] (regarding IPCC instructions).

Further to previous correspondence, please forward to me a copy of the document you have cited 'Managing Crime in Prisons'. I have until 21 June 2010 to respond to the court".

4. West Yorkshire Police wrote to the complainant on 25 August 2010, apologising for the delay in responding to his request and asking if he still wished to pursue his complaint. It explained that the delay in responding was because it was experiencing high levels of requests.
5. West Yorkshire Police finally issued its refusal letter on 22 September 2010. In this correspondence, West Yorkshire Police provided the complainant with a redacted copy of the document "*Managing Crime in Prisons*". The redacted sections of the document were exempted under section 31(1)(a), (b) and (c) of the Act (law enforcement).
6. The complainant requested an internal review on 25 September 2010. West Yorkshire Police upheld its decision in its internal review correspondence which it sent to the complainant on 20 October 2010.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 5 November 2010 to complain about the way his request for information had been handled. He told the Commissioner:

"I am not satisfied with the response of 20 October 2010 or indeed the apparently deliberate delays and obfuscation [sic] ... in providing me the documents which have a bearing on matters. I require with no further delay pages 13 to 18 of Section 31".

8. He contacted the Commissioner again on 12 February 2011 saying that he also wished to see pages 24 and 25 of the withheld information.
9. Accordingly, the Commissioner has focussed his investigation on West Yorkshire Police's citing of the exemption in section 31 with respect to

the requested information as well as on the timeliness with which it handled the request.

10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. The Commissioner wrote to West Yorkshire Police on 31 January 2011 asking for further explanation of its reasons for citing section 31 in relation to the request, including its reasons for concluding that the public interest in maintaining the exemption outweighs the public interest in disclosure of the information requested.
12. West Yorkshire Police contacted the Commissioner on 25 February 2011 requesting additional time for responding. Subsequent to this, West Yorkshire Police provided an initial response on 1 March 2011, followed by its substantive response on 25 March 2011. In this correspondence, West Yorkshire Police confirmed that, in addition to citing section 31(1)(a) and (b) it was also relying on section 31(1)(f). Although it confirmed on 1 March 2011 that it was no longer citing section 31(1)(c), mention was again made of this subsection being relevant on 25 March 2011. West Yorkshire Police subsequently clarified that it was relying on this subsection.

Analysis

Exemptions

Section 31 Law enforcement

13. Section 31 of the Act applies to information if its disclosure would, or would be likely to, prejudice certain specified law enforcement matters.
14. In this case, West Yorkshire Police is citing subsections 31(1)(a), (b), (c) and (f) in relation to all of the withheld information. These relate, respectively, to:
 - the prevention or detection of crime;
 - the apprehension or prosecution of offenders;
 - the administration of justice; and
 - the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.

15. With respect to the subsection of the exemption that relates to the maintenance of security and good order in prisons, the Commissioner considers that this includes both external and internal security matters as well as internal disciplinary matters.
16. The Commissioner has also referred to the guidance produced by the Ministry of Justice on the law enforcement exemption¹. That guidance says that the term 'security' will include all matters related to the secure custody of those detained, the safety of all persons in the institution, and the detection and prevention of activity (including but not limited to criminal activity) not permitted within the institution. The term 'good order' will include all matters addressing disobedience on the part of individuals or concerted indiscipline by groups of persons in the institution, and promoting a safe and orderly regime.

The applicable interests

17. In order to find the exemption in section 31 engaged, the Commissioner must first establish that disclosure of the withheld information would prejudice, or would be likely to prejudice, the relevant area of law enforcement cited by West Yorkshire Police.
18. In this case, West Yorkshire Police is citing subsections 31(1)(a), (b) (c) and (f). In the case of the exemption under section 31(1)(a), the relevant applicable interest is the prevention or detection of crime. In the same way, the relevant applicable interest under section 31(1)(b) is the apprehension or prosecution of offenders, under section 31(1)(c) the administration of justice, and under section 31(1)(f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.

The nature of the prejudice

19. The Commissioner's view is that the use of the term 'prejudice' is important to consider in the context of the exemption at section 31. It implies not just that the disclosure of information must have some effect on the applicable interest(s), but that this effect must be detrimental or damaging in some way.
20. In support of its reasons for withholding the information under section 31, West Yorkshire Police provided the Commissioner with its arguments that the information could be used to prejudice the areas of law enforcement which it considered applicable in this case. For example, it explained why it considered disclosure would enable offenders to commit

¹ <http://www.justice.gov.uk/guidance/docs/foi-exemption-s31.pdf>

21. The Commissioner accepts that the effect of disclosure in this case can be said to have a detrimental or prejudicial effect and that the nature of the prejudices claimed with respect to the law enforcement activities in subsections (a), (b), (c) and (f) can be adequately linked back to the disclosure of the information in question.

The likelihood of the prejudice

22. To engage the section 31(1) exemption it is necessary for the public authority to demonstrate that disclosure of the requested information would, or would be likely to, cause some relevant prejudice. In this case, West Yorkshire Police has confirmed it is relying on the lower threshold, that disclosure 'would be likely' to have a prejudicial effect.

Is the exemption engaged?

23. With respect to subsection (c), the Commissioner accepts that "*the administration of justice*" is not defined in the Act. He also notes the potential breadth of this subsection. In his view, it covers a wide variety of matters that surround any type of judicial body and its administrative support. He considers that the exemption also covers the requirement to conduct proceedings fairly. It follows that he considers that ensuring people's access to justice is part of the administration of justice.
24. However, in view of the potential breadth of section 31(1)(c), and the fact that West Yorkshire Police is also citing other, more specific, subsections of the exemption in this case, the Commissioner has concluded that the most practical way to assess this case is to focus first on its citing of section 31(1)(a), (b) and (f).
25. The requested information in this case is a draft document which sets out guidance for those involved in the process of reporting, and dealing with, offences committed within prison establishments. West Yorkshire Police advised the Commissioner that, in its view, the issue of the prevention and detection of crime appeared to be the main thrust behind the overall document.
26. West Yorkshire Police argued that the requested information is exempt because it would inform prisoners wishing to commit crimes whilst in prison of the thresholds that are necessary before an offence will be reported to the police. In this respect, it argued that disclosure would enable those wishing to commit an offence to tailor their offending

behaviour to the level necessary to avoid a matter being referred to the police.

27. The Commissioner has considered the potential for crime occurring in prison establishments. In this respect, he acknowledges that an individual who is in prison as a result of having committed a crime may contemplate further criminal activity when in prison and that they might be assisted in knowing how to do so, without the matter being reported and subsequently investigated, by disclosure of the information at issue in this case.
28. In the Commissioner's view, there is a potential for overlap between the various subsections cited in this case. For example, subsections (a), (b) and (f) could all be relevant where the crime relates to the maintenance of good order, such as an assault on another prisoner or a prison officer.
29. Although restricted in what he is able to say because of the nature of the withheld information, having duly considered the arguments put forward by West Yorkshire Police and having viewed the withheld information, the Commissioner's view is that the lower level of 'would be likely to occur' has been demonstrated. He therefore finds the exemption engaged in relation to the withheld information by virtue of section 31(1)(a), (b) and (f) and he has carried this lower level of likelihood through to the public interest test.

Public interest arguments in favour of disclosing the requested information

30. The Commissioner notes that, in putting forward its public interest arguments in this case, West Yorkshire Police did not provide separate arguments relating to each subsection of the exemption in section 31.
31. In favour of disclosing the withheld information, West Yorkshire Police acknowledged that it would enable a full representation of how crimes in prisons are managed.
32. With respect to the public interest arguments put forward by West Yorkshire Police, the complainant told the Commissioner:

"The balancing test argument is unreasonable".
33. The Commissioner is also aware from correspondence in this case that the complainant considers that disclosure would not adversely affect prison order and discipline.
34. The Commissioner acknowledges that, when considering public interest factors in favour of maintaining an exemption, a public authority should only consider the particular interest which the exemption seeks to protect, for example the prevention of crime. In contrast, the public

interest factors in favour of disclosure are not restricted in this way. He therefore recognises that the factors in favour of disclosure in this case include the general public interests in the promotion of transparency, accountability and understanding of the issues concerning law enforcement activity in the prison environment.

Public interest arguments in favour of maintaining the exemption

35. West Yorkshire Police argued that the very nature of the prison environment makes it essential that good order and security are maintained.
36. The Commissioner notes that this argument is made against a background of rising prison population numbers. This impacts not only on the environment that exists within prison establishments but also on the need to ensure that prison good order, discipline and safety are maintained in them.
37. Arguing against disclosure, West Yorkshire Police told the complainant:
"Disclosure of the exempted information would inform prisoners wishing to commit crimes whilst in prison of the thresholds that are necessary before an offence will be reported to the police".
38. It argued that not only would this enable those wishing to commit an offence to tailor their offending behaviour to avoid a matter being referred to the Police, it would also serve to reduce the likelihood of victims gaining full access to justice before criminal courts. In this respect, the Commissioner recognises that where the crime concerned is a crime against an individual, the victim of the crime may equally be a prisoner or a member of the prison staff.
39. In providing its arguments in favour of maintaining the exemption, West Yorkshire Police brought to the Commissioner's attention the potential outcome of the breakdown of good order in prison establishments, referring him to riots which have occurred in the past when prison order has broken down.

Balance of the public interest arguments

40. The complainant has explained to the Commissioner why he is seeking the withheld information. He argued that:

"the reasons given to exempt information appear lame, and the refusal by police under section 17 of the FOI Act 2000 is unjustified given the unique circumstances".

41. However, the Commissioner must consider whether or not it is appropriate for the requested information to be released to the general public. The wider public interest issues must therefore be considered when deciding whether or not the information requested is suitable for disclosure. Therefore, in reaching his decision about disclosure in this case, the Commissioner has taken into account the fact that neither the identity of the applicant nor any specific personal reasons for wanting the requested information are relevant to the consideration of a freedom of information request.
42. The Commissioner notes that the information at issue in this case relates to the processes for managing crime in prison establishments. The purpose of the draft document is to provide operational guidance on those crimes which must be referred to the police for crime reporting purposes and subsequent investigation and the processes for doing so.
43. The Commissioner accepts that disclosure of the information in this case would provide the public with an insight into the guidance with respect to the processes and procedures to be followed when managing crime in prison.
44. However, the Commissioner considers that maintaining public confidence in the operation of the prison system in general, and with respect to matters of law enforcement in the prison environment in particular, is crucial to the public interest. In his view, the public interest is not served by releasing information which may provide criminals with an advantage over the public authority where it seeks, for example, to prevent crime or disorder or to apprehend or prosecute offenders.
45. In this case, the Commissioner has already accepted that the likelihood that an individual with access to the information could use it in ways prejudicial to the public authority is more than a hypothetical possibility. In the Commissioner's view, this adds weight to the argument in favour of maintaining the exemption in this case.
46. The Commissioner has also taken into account the effect of disruption in prison establishments when considering whether disclosure serves the interests of the public. In this respect he considers disruption could occur as a result of crimes against the person as well as against property.
47. He acknowledges that prisons have a responsibility to keep prisoners and staff safe. It follows that he considers that it is not in the public interest for a public authority to release information which would alert prisoners to the thresholds required before a crime against the individual is reported to the police - the public interest is not served by

releasing information which might put anybody within an institution at risk of harm.

48. In considering the weight of this factor, the Commissioner has taken account of the fact that a victim of crime could be a prisoner or a member of the prison staff.
49. In conclusion, the Commissioner finds that the weighty public interest arguments in favour of maintaining the exemption outweigh the public interest arguments for disclosure which were cited above.

Procedural Requirements

Section 10 Time for compliance

Section 17 Refusal of request

50. In this case, the complainant's request was received by West Yorkshire Police on 15 June 2010. Although it contacted the complainant on 7 July 2010 and 25 August 2010, in the Commissioner's view neither piece of correspondence confirmed or denied it held the requested information. He therefore considers West Yorkshire Police did not issue its refusal letter until 22 September 2010, some two months after it had received the information request. Accordingly the Commissioner finds that, in failing to confirm or deny within 20 working days whether it held the requested information, West Yorkshire Police breached the requirements of section 10(1), and that it also breached section 17(1) by failing to provide the details required by that section within 20 working days.
51. Section 17(2) provides that a public authority may extend the time limit where it is still considering the public interest after 20 working days, as long as certain measures are taken. However, where any additional time beyond the initial 20 working days is required, the public authority must still serve a 'refusal notice' under section 17 of the Act within 20 working days of a request even in those cases where it is relying on a qualified exemption and has not yet completed the public interest test; state the exemption(s) being relied on and, if not apparent, the reasons why they apply; and give an estimate of the time by which the final decision will be reached
52. When West Yorkshire Police wrote to the complainant on 25 August 2010, it made reference to the provision within the Act to extend the time when considering the public interest and told him that it estimated that it would take an additional 20 working days to respond. As it did not provide details of the qualified exemption(s) it was considering, the Commissioner has concluded that it breached its obligations under section 17(2).

The Decision

53. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- it correctly withheld the requested information by virtue of section 31(1).

54. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- it breached section 10(1) by failing to inform the complainant whether it held the requested information within 20 working days of the request;
- it breached section 17(1) by failing to issue the refusal notice within the statutory time limit; and
- it breached section 17(2) by failing to state the exemptions being relied on.

Steps Required

55. The Commissioner requires no steps to be taken.

Right of Appeal

56. 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: 0300 1234504

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

57. 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.

58. 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 21st day of June 2011

Signed

**Jon Manners
Group Manager
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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

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.”