

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 25 July 2011**

**Public Authority:** The Security Industry Authority  
**Address:** PO Box 49768  
London  
WC1V 6WY

### **Summary**

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The complainant requested information from the Security Industry Authority (SIA) regarding an investigation into alleged misconduct on the part of an SIA licence holder. The SIA refused to confirm or deny whether it held information falling within the scope of the request and cited section 30(3) of the Act (investigations and proceedings). The Commissioner has investigated and determined that the SIA was correct to rely on section 30(3) to refuse to confirm or deny whether it held any relevant information. The Commissioner does not require any steps to be taken.

### **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.

### **Background**

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2. The Security Industry Authority (SIA) is the organisation responsible for regulating the private security industry. It is an independent body reporting to the Home Secretary, under the terms of the Private Security Industry Act 2001.

## The Request

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3. The complainant contacted the SIA on 28 June 2010 in relation to an earlier complaint he had made:

*"Please let me know the result of your investigation into my complaint against JobCentre Plus and the individual concerned.*

*As [named individual] failed to display a valid SIA licence when requested I am unable to check your public register of licence holders. However, as my complaint was passed to your intelligence section they should have been able to identify [named individual] as a result of their investigations. Therefore please let me know whether the person I complained about [named individual] has an SIA licence; if he has please let me know his SIA licence number; please also let me know [named individual's] employer.*

*My request for the above information is being made under the Freedom of Information Act 2000".*

4. The complainant contacted the SIA on 3 August 2010 to say that he had not had a response. The Commissioner notes that there is no evidence that the SIA ever received the correspondence dated 28 June 2010. The SIA responded on 6 August 2010 requesting further information in relation to the request. The Commissioner notes that this included details of the licence holder the complaint was about.

5. The complainant responded on 16 August 2010:

*"I must stress that my Freedom of Information request relates to the investigation carried out by your intelligence department .... and not solely to any individual".*

6. The SIA responded on 23 August 2010 referring to the request being received on 18 August 2010. It cited section 30(3) of the Act, and refused to confirm or deny whether it held any information regarding any investigations or enforcement action in relation to either the named individual or his employer. It appears the complainant did not receive this letter.

7. Following further correspondence between the complainant and the SIA, the SIA wrote to him on 26 October 2010 explaining that it had previously responded to his request on 23 August 2010 and was unaware he had not received that letter.

8. The complainant wrote to the SIA on 15 November 2010 asking it to reconsider its decision. The SIA upheld its decision neither to confirm

nor deny holding information relevant to the request in its internal review correspondence dated 7 March 2011.

## The Investigation

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### Scope of the case

9. The complainant first contacted the Commissioner on 21 January 2011 to complain that the SIA had failed to conduct an internal review. He told the Commissioner:

*"Following the provision of intelligence, on 28 June 2010 I made a request to the Security Industry Authority (SIA) under the Freedom of Information Act 2000 for details of an SIA licence holder and the result of their investigation to identify the licence holder and possible breaches of the Private Security Industry Act 2001".*

10. Having received the outcome of the SIA's internal review, the complainant contacted the Commissioner on 28 March 2011 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:

*"There is a very strong and overriding public interest in disclosing details of licensed individual, organisations and the Security Industry authority in relation to their respective obligations under the relevant legislation."*

11. On 16 May 2011, following correspondence from the Commissioner about the scope of the case, the complainant clarified:

*"I also require the results of any investigation the SIA has carried out as a result of the intelligence supplied by me, including but not limited to that which relates to offences which may have been committed against the PSIA 2001 [Private Security Industry Act 2001] and breaches of licence conditions of any SIA holder."*

12. The Commissioner notes that much of the delay in the handling of this request appears to be due to unexplained non-delivery of correspondence. Taking account of the complainant's response to his correspondence in which he set out the scope of his investigation, the Commissioner considers the scope of his investigation to be whether the SIA was correct neither to confirm nor deny holding any information with respect to any relevant investigation it may have carried out.

## Chronology

13. The Commissioner wrote to the SIA on 3 May 2011 asking for further explanation of its reasons for citing section 31(3), neither confirming nor denying that it held information relevant to the request.
14. The SIA responded on 9 May 2011 providing further information in support of its view that it was entitled neither to confirm nor deny whether it held information relevant to the request.

## Analysis

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### Exemptions

#### Section 30 Investigations and proceedings

15. Section 30 is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2). In this case, the SIA has confirmed that it considers that the classes of information specified in section 30(1) would be relevant if it held any information that falls within the scope of the request.
16. Section 30(1)(a)(i) provides an exemption to disclosure for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person should be charged with an offence. Section 30(1)(a)(ii) provides an exemption for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person charged with an offence is guilty of it. In order for the exemptions within section 30(1) to be applicable, any information held must be held for a specific or particular investigation, and not for investigations in general.
17. The Commissioner addressed the issue of the duty to confirm or deny with respect to investigations and proceedings in Decision Notice FS5034793. In that case, the complainant requested information from Dyfed-Powys Police about a report he had made about a vehicle being driven on a specific road.
18. The public authority in this case is the SIA. The SIA has confirmed that it has powers of prosecution under the terms of the Private Security Industry Act 2001. Accordingly the Commissioner is satisfied that it has the power to carry out investigations of the sort described in sections 30(1)(a)(i) and (ii) to establish whether an offence has occurred.

19. The Commissioner understands that, on receipt of the complainant's initial complaint to the SIA, the complainant was told:

*"The information you have provided in your letters was recorded and passed to our intelligence section for assessment to see if any offences have been committed against the PSIA 2001 or licence conditions of any SIA holder have been breached".*

20. The Commissioner is satisfied that any information falling within the scope of the request that may be held by the SIA would have been held for the purposes of a specific investigation, which it has a duty to conduct with a view to ascertaining whether a person should be charged with an offence or whether a person charged with an offence is guilty of it. The Commissioner is therefore of the view that the exemption at section 30 is engaged.

21. As section 30 is a qualified exemption the Commissioner has gone on to consider whether, 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 SIA holds any information falling within the scope of the request.

***Public interest arguments in favour of maintaining the duty to confirm or deny whether the requested information is held***

22. The complainant argued that:

*"As both parties were acting in their business capacities there are no personal issues to consider. The information I have requested does not relate to their business affairs, it only relates to failure to display a valid SIA licence when I asked and his employer's failure to provide his licence details. Disclosure of details concerning just the above issues would not jeopardise the interests of either party and there is a very strong and overriding public interest in disclosing details of licensed individuals, organisations and the Security Industry in relation to their respective obligations under the relevant legislation."*

*"It would not be premature to provide the conclusions of an investigation. As the allegations of misconduct have already been made there can be no harm if there is evidence that they were unfounded, otherwise disclosure would be in the public interest if there were evidence of misconduct".*

***Public interest arguments in favour of maintaining a 'neither confirm nor deny' response***

23. In this case, the SIA argued:

*"The success of investigations depends on ensuring that information about them is not disclosed prematurely".*

24. The Commissioner considers that many of the public interest arguments in favour of maintaining a 'neither confirm nor deny' response expressed in Decision Notice FS50347493 also apply in this case.

***Balance of the public interest arguments***

25. In the Commissioner's view, the public must be satisfied that the SIA takes seriously information it receives from members of the public that may point to the existence of activity in breach of the legislation governing the private security industry. Sufficient information should therefore be made available to give the public reassurance that its work in this respect is done effectively and promptly.

26. The Commissioner notes that the SIA website states:

*"Much of our enforcement activity cannot be reported on due to data protection and commercial considerations. However, completed prosecutions are a matter of public record. The following table provides information on the prosecutions investigated and initiated by us in the last 12 months. Other prosecutions are initiated by police forces and other government agencies with our support: these are not reported here."*

27. As was the case in Decision Notice FS5034793, the Commissioner considers the wording of the request for information will affect whether or not a public authority will confirm or deny it holds that information. The Commissioner also considers that, in many cases, the more specific the request, the lower the likelihood of the duty arising. In this case, the request is focussed on a particular incident or possible investigation, rather than investigations in general
28. The Commissioner has taken into account the timing of the request in this case. The request was made to the SIA on 28 June 2010 following correspondence dated 24 May 2010 about a complaint. The Commissioner acknowledges that confirming or denying whether information is held in relation to an investigation that was ongoing at the time or had been closed recently, could impact on the investigative process and considers this to be a valid factor in favour of maintaining the exclusion from the duty to confirm or deny.
29. In reaching a decision in this case, having considered the opposing public interest factors, the Commissioner considers that, in all the circumstances of the case, the public interest in maintaining the exclusion from the duty to confirm or deny outweighs the public interest in confirming or denying whether information is held.

30. He has given particular weight to the timing of the request in relation to the age of any information which might be held, the fact that any information that may be held would relate to a specific investigation, and the potential prejudice to any investigation which may have been ongoing, or recently closed at the time of the request. He has therefore decided that the SIA was correct to apply section 30(3).

## The Decision

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31. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## Steps Required

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32. The Commissioner requires no steps to be taken.

## Other matters

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33. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

34. During the course of his investigation, the SIA told the Commissioner:

*"It wasn't immediately clear in the letter we received from [the complainant] on 15 November 2010 that the applicant had requested that an internal review be undertaken on his request. The letter states please reconsider your decision not to release the information I have requested".*

35. In the Commissioner's view, the complainant's letter clearly expresses dissatisfaction with the SIA's response.

36. Paragraph 38 of the section 45 Code of Practice (the "Code") recommends that:

*"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint...These communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision of the handling of the application."*



37. The Commissioner notes that it was only as a result of the Commissioner's intervention that the authority responded to the complainant's expression of dissatisfaction. The Commissioner expects that the authority's future handling of complaints will conform to the recommendations of the Code.



## Right of Appeal

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38. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

39. 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.
40. 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 25<sup>th</sup> day of July 2011**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### 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"

### **Investigations and proceedings conducted by public authorities.**

#### **Section 30(1) provides that –**

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
  - (i) whether a person should be charged with an offence, or
  - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct."

**Section 30(3) provides that –**

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)."