

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 August 2011

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

Summary

The complainant asked the Ministry of Justice (the "public authority") to provide information relating to covert surveillance in prisons. The public authority relied on sections 23(5), 24(2) and 31(3) of the Freedom of Information Act (the "Act") to refuse to confirm or deny whether any of the information falling within the scope of the request was held.

The Commissioner concludes that sections 23(5) and 24(2) have been correctly relied upon as a basis upon which to refuse to confirm or deny whether the requested information is held. He has not therefore considered the applicability of section 31(3). The complaint is not upheld.

The public authority's handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

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 Commissioner has issued an earlier decision in a case which also sought to ascertain information about covert surveillance in a prison.

The decision in this case, FS50289146, can be found on the Commissioner's website¹.

3. The complainant is a serving prisoner. He claims that whilst in prison rooms for some legal visits were 'bugged' and he states that he was: "*convicted largely on the basis of a so-called cell confession*".
4. The complainant also drew the Commissioner's attention to a newspaper article. The Commissioner clarified with the public authority that this article was not written as a result of an official press release.

The request

5. On 21 September 2010 the complainant made the following information request:

"I should be grateful if you could answer the following questions in line with the Freedom of Information Act 2000:

- 1) *Between October 1997 and March 1999 were listening devices placed within the legal visits rooms, including Category A legal visits? If so, during the same period on how many occasions were legal visits listened too, and were they recorded?*
- 2) *Between October 1997 and November 1998, how many prisoners were selected by Greater Manchester Police and/or the Prison service to wear bugging/listening devices sewn into clothing?*
- 3) *How many convicted prisoners were placed in cells for the purpose or purposes of obtaining cell confessions between October 1997 and March 1999?*
- 4) *Who authorised the cell sharing process, and on how many occasions?*
- 5) *Were bugging/listening devices capable of recording conversations, and if so, where did the recordings go?*
- 6) *How long had this practice been going on before it was exposed by the media?*
- 7) *How many cell confessions resulted from the bugging/listening device process?*
- 8) *Who placed the bugging/listening devices in either the legal visits rooms or sewn into prisoners jeans?*
- 9) *Out of the inmates selected, were they police informers?"*

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6. On 12 October 2010 the public authority sent its response. It neither confirmed nor denied holding any information by virtue of sections 23 (information relating to security service), 24 (national security) and 31 (law enforcement).
7. On 2 November 2010 the complainant sought an internal review.
8. On 24 November 2010 the public authority sent out a response which upheld its previous position. Unfortunately, this was not received by the complainant until 22 December 2010 - the Commissioner is not aware of why the delay occurred.

The investigation

Scope of the case

9. On 28 February 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the public authority was correct to neither confirm nor deny holding the requested information.

Chronology

10. Having been advised that a complaint had been received the public authority wrote to the Commissioner on 13 April 2011. It advised the Commissioner that it believed this case to be similar to the earlier decision referred to in *'Background'* above.
11. On 10 May 2011 the Commissioner commenced his enquiries. He wrote to the complainant to advise him that he would be considering whether or not the public authority was correct to neither confirm nor deny holding information. He also advised the complainant regarding the earlier decision referred to by the public authority and provided him with a hard copy.
12. On 10 June 2011 the Commissioner received the public authority's full response. It maintained its previous position.

Analysis

Exemptions

13. As referred to above, the Commissioner has already promulgated a Decision Notice in another case concerning this public authority and alleged 'bugging' of conversations within prison cells. Although the wording of the earlier request is slightly different, the type of information requested is essentially the same. Therefore, for the same reasons identified in his earlier Notice, the Commissioner has reached the same conclusion.
14. As he has reached this conclusion in respect of sections 23(5) and 24(2) he has not gone on to consider the applicability of section 31(3).

Procedural requirements

Section 17 – refusal of request

15. Section 17(1) requires 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".*

16. Although the public authority did state which exemptions it was relying on, at no point did it specify to the complainant the specific subsection being relied upon. In failing to state this it breached 17(1)(b).

The Decision

17. 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 cited the exemptions in sections 23(5) and 24(2).*

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

- *in failing to issue an adequate refusal notice it breached section 17(1)(b).*

Steps required

19. The Commissioner requires no steps to be taken.

Right of Appeal

20. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

Dated the 4th day of August 2011

Signed

**Jon Manners
Group Manager**

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

Legal annex

Section 1 – general right of access

- (1) 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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) 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 17 - refusal of request

- (1) 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 23 - information supplied by or relating to, bodies dealing with security matters

- (1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).
- (2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or

relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.

- (3) The bodies referred to in subsections (1) and (2) are-
- (a) the Security Service,
 - (b) the Secret Intelligence Service,
 - (c) the Government Communications Headquarters,
 - (d) the special forces,
 - (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
 - (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
 - (g) the Tribunal established under section 5 of the Security Service Act 1989,
 - (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
 - (i) the Security Vetting Appeals Panel,
 - (j) the Security Commission,
 - (k) the National Criminal Intelligence Service, and
 - (l) the Service Authority for the National Criminal Intelligence Service.
- (4) In subsection (3)(c) "the Government Communications Headquarters" includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.
- (5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

Section 24 - national security

- (1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.
- (2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

Section 31 – law enforcement

- (1) 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-
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,

- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).