

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 01 November 2011

Public Authority: Ministry of Defence
Address: Main Building
Whitehall
London
SW1A 2HB

Decision (including any steps)

1. The complainant has requested information concerning enquiries which have been undertaken following the imprisonment of three soldiers for theft of weapons. The public authority has identified relevant information and released some of it to the complainant. The remainder has been withheld under the exemptions at sections 24 (national security), 26 (defence) and 31 (law enforcement) of the FOIA.
2. The Information Commissioner's decision is that the public authority has correctly withheld the information.
3. The Information Commissioner does not require the public authority to take any steps.

Request and response

4. On 30 November 2010, the complainant wrote to the public authority and requested information in the following terms:

"In 2008, three members of 5 Scots, the Royal Regiment of Scotland, were imprisoned for the theft of weapons from their barracks in Canterbury..."

At Maidstone Crown Court on 27/10/2008, Mr Justice Sir Robert Akenhead said: "The Army needs to conduct an urgent inquiry as to how this could have happened."

I would like to ask the MoD exactly whether any enquiry was conducted and if so, whether it came to any conclusions or made any recommendations.

It also emerged during the court proceedings that items stolen by these men were never recovered. I would also like to ask the MoD for a full list of what these items are”.

5. No enquiry was conducted as a result of the Judge's comments and the complainant was advised accordingly. However, the public authority did advise the complainant of audit work that had been conducted and the complainant asked for copies of this information.
6. There was various interim correspondence concerning the request.

Scope of the case

7. On 17 August 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He asked the Information Commissioner to consider the public authority's withholding of the information identified.
8. During the Information Commissioner's investigation the public authority disclosed further information which will therefore not be considered here. This disclosure did not satisfy the complainant and he still required a decision.

Reasons for decision

9. The public authority has identified three documents within the scope of the request and has disclosed some of the content. It has advised that it has applied each of sections 24(1), 26(1) and 31(1)(a) to the remaining information, each exemption being claimed to apply in its entirety to all of the information.
10. The three documents are:
 - Internal Audit Report, 17 October 2008
 - Protective Security Inspection, 15 May 2008
 - Protective Security Advisory Visit, 6 October 2009

Section 24(1)

11. Section 24(1) of the FOIA states that *“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”*. This exemption has been applied to all of the withheld information.
12. In the Information Commissioner’s view, the wording in section 24(1) suggests that the focus is on the effect of disclosure rather than the original purpose of the information. Furthermore, in his opinion, the word ‘required’ means ‘reasonably necessary’ and it is not sufficient that the information sought simply relates to national security. However, whilst it is important to demonstrate that there would be a real possibility of harm to national security should the information be disclosed, there is no need to prove that there is in fact a specific, direct or imminent threat to national security. It is sufficient in the Information Commissioner’s opinion that the disclosure is capable of indirectly creating a real possibility of harm to national security.
13. The Information Commissioner considers that the term ‘national security’ includes:
 - the security of the United Kingdom and its people; and
 - the protection of the United Kingdom’s legal and constitutional systems.
14. The Information Commissioner considers that the role of the Ministry of Defence is at the heart of the security of the United Kingdom and its people and its functions relate directly to safeguarding national security.

Effect of disclosure

15. The public authority advised that the withheld information outlined the procedures for securing and holding ammunition, and disclosure: *“would allow individuals with wrongful intentions potentially to obtain arms and ammunition, thus jeopardising national security”*.
16. Having had sight of the withheld information the Information Commissioner has carefully considered the public authority’s arguments. He considers that release of the withheld information would provide a useful source of intelligence for those wishing to target the security of the UK. Under these circumstances, the Information Commissioner accepts that the application of this exemption is reasonably necessary in order to safeguard national security.
17. The Information Commissioner can understand why the complainant considers that disclosure of the disputed information is in the public

interest as soldiers have been able to obtain and pass on weapons and ammunition. He therefore appreciates that there is a need for the public to be assured that this will not recur. However, it is the potential value of the disputed information in the hands of those who constitute a threat to national security that must be considered. There is no requirement for the public authority to demonstrate that there is a specific and imminent threat from disclosure; it is sufficient that the public authority has been able to demonstrate that, in the wrong hands, the disputed information could indirectly create a real possibility of harm to national security.

Public Interest Test

18. The exemption at section 24(1) is qualified. This means that the Information Commissioner must also decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the requested information

19. The public authority acknowledged that disclosure would demonstrate openness and transparency to the public.
20. The public authority has further stated:

"Given the strong public interest in safeguarding National security, release would provide the public with a better understanding of the way arms and ammunition are stored and accounted for and give confidence in the security of these measures".

Public interest arguments in favour of maintaining the exemption

21. In respect of the two security reports, the public authority has advised the Information Commissioner that:

"The release of the PSI and PSAV reports would release into the public domain the weaknesses and vulnerabilities of 5 Scots, Howe Barracks' security and its arms and ammunition controls and accounting. This would allow individuals with wrongful intentions to potentially get hold of arms and ammunitions, therefore jeopardising National Security."

"The reports also clearly outline the procedures in securing and holding ammunition and demonstrates the Army's capability and effectiveness in its weapon and ammunition management".

22. In respect of the audit report, the public authority has advised the Information Commissioner that:

"The release of the redacted information in the report into the public domain would clearly demonstrate errors in accounting, control and storage of the arms and ammunition of the establishments reviewed allowing it to potentially fall into the wrong hands i.e. terrorists".

Balance of the public interest arguments

23. The Information Commissioner considers there is always a public interest in ensuring the public is confident in the ability of the armed forces to maintain the security of the weaponry for which it is responsible, which would obviously be dangerous if it were to fall into the wrong hands as well as very costly to the public purse. However, there is also a significant public interest in ensuring national security is not used inappropriately as a shield to prevent transparency and accountability in this area. The Information Commissioner agrees with the public authority that disclosure would demonstrate openness and transparency to the public.
24. Nevertheless, there is also a significant public interest in ensuring that the security of the UK is not put at risk by the disclosure of the disputed information. There is a significant public interest in preventing the disclosure of information which could potentially assist individuals or groups intent on damaging national security by increasing any risks associated with the infiltration of any base where there is weaponry.
25. In balancing the public interest the public authority advised the Information Commissioner that, in respect of the security reports:

"The reports describe in detail the security vulnerabilities and identifies weaknesses in the unit inspected. This would give terrorists or criminals information that could be used to gain access to the Brigade HQ's and weapons storage, potentially placing National security at risk."

26. In balancing the public interest the public authority advised the Information Commissioner that, in respect of the audit report:

"The public interest in disclosure of this information would demonstrate to the public that the Army do have areas of weakness, but have systems in place in order to mitigate the risk and prevent any reoccurrence. However, this should be balanced with the public interest against releasing information that may compromise the safety of individuals and establishments. The report outlines processes in the storage of arms and ammunition,

in some cases at vulnerable units ... the release of which would expose establishments to attack and assist a potential enemy in gaining access to establishments and arms storage facilities. "Enemies" in this context focusses more on criminal elements but does not exclude foreign agencies or other non-governmental threats. The balance in the public interest lies in non disclosure".

27. Having viewed the information, the Information Commissioner finds that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure. The public authority has already disclosed a considerable amount of the requested information and he considers that disclosure of the remainder would, on balance, be contrary to the public interest.
28. Having reached this conclusion, the Information Commissioner did not consider the applicability of the other exemptions.

Right of appeal

29. 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,
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

30. 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.
31. 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 1st day of November 2011

Signed

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**