

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2011

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

Decision (including any steps)

1. The complainant has requested information concerning two reviews undertaken by the public authority at a prison and a young offenders' institution. These were withheld in full citing section 31(1)(c) and (f).
2. Nearly eight months after requesting an internal review one had still not been provided so this investigation was commenced in the absence of a review. During the investigation one was eventually provided and some information was released (the release taking into account the passage of time).
3. The Information Commissioner's decision is that, at the time of the request, the information was properly withheld.
4. The Information Commissioner requires no steps to be taken.

Request and response

5. On 16 December 2010, the complainant wrote to public authority and requested information in the following terms:

"I understand that the Prison Service has carried out reviews of the disturbances at Moorland prison ["HMP Moorland"], near Doncaster in South Yorkshire, and Warren Hill ["HMYOI Warren Hill"] at Hollesley in Suffolk, which took place in early November 2010.

With regard to both reviews, I would like to request:

1. A copy of the executive summary of the reviews
2. A copy of the findings of the reviews
3. A copy of the conclusions of the reviews

4. If possible, a copy of the full reviews".

6. The public authority responded on 6 January 2011. It confirmed that it had undertaken the reviews but concluded that disclosure would: *"compromise the ongoing police investigation and highlight possible security weaknesses in the establishments"*.
7. On 6 February 2011 the complainant sought an internal review. On 24 October 2011, during this investigation, the public authority sent out its internal review.

Scope of the case

8. On 18 May 2011 the complainant originally contacted the Information Commissioner to complain about the lack of internal review. The Information Commissioner chased a response from the public authority and asked the complainant to revert to him if a response was not forthcoming, saying that he would investigate his case in the absence of an internal review on this occasion.
9. On 25 September 2011 the complainant contacted the Information Commissioner again to say he had received no response. On the following day the Information Commissioner commenced his enquiries with the public authority. He advised the public authority that he would conduct his investigation in the absence of an internal review.
10. On 24 October 2011 the public authority sent out its internal review. It reassessed the request and gave a response based on both the situation at the time of the request and the current situation. It disclosed part of one report and explained to the Information Commissioner that:

"As part of the consultation process in the internal review, we obtained the views of our partners in the criminal justice system, mindful that the public interest balance alters over time. In light of the fact that the Police investigations into the Moorland incident are further advanced than those for Warren Hill, and the two reports differ in their nature, we concluded that the balance of the public interest favoured disclosure of some parts of the Moorland report."

11. As the public authority has now provided this information to the complainant the Information Commissioner will no longer consider its disclosure within this decision notice. Further information was also provided to the complainant during the investigation which will also not be further considered.

12. Following the disclosure, the Information Commissioner contacted the complainant to ascertain whether this had satisfied any part of his complaint; however, the complainant advised that he wanted the Information Commissioner to consider full disclosure of both reports.
13. The Information Commissioner will therefore consider disclosure of the remainder of the reports.
14. The Information Commissioner has viewed full copies of both reports.

Reasons for decision

15. The Information Commissioner notes that the public authority took an unreasonable amount of time to provide its internal review. In doing so it revisited the public interest and concluded that it was now able to provide some of the withheld information to the complainant. However, it is important to clarify here that the Information Commissioner must consider whether or not disclosure was justified at the time the request was made; this is laid down in section 1(4) of the FOIA. (As already mentioned above, information which has since been released is not being considered).
16. Therefore, the Information Commissioner will only consider those elements of the public authority's responses which refer to the situation at the time of the request.

Section 31(1)(c) and (f)

17. Both reports were originally withheld in their entirety under section 31(1)(c) and (f); in its internal review the public authority maintained this view.
18. Section 31 of the Act applies to information if its disclosure would, or would be likely to, prejudice certain specified law enforcement matters. In this case, the public authority is citing subsections 31(1)(c) and (f) in relation to both reports. These relate, respectively, to:
 - the administration of justice;
 - the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.

The applicable interests

19. In order to find the exemption in section 31 engaged, the Commissioner must first establish that disclosure of the withheld

information would, or would be likely to, prejudice the relevant area of law enforcement cited (as indicated above).

The nature of the prejudice

20. 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 that not only must the disclosure of information have some effect on the applicable interests, but also that this effect must be detrimental or damaging in some way.
21. The public authority has explained that it believed disclosure of the information would compromise the ongoing police investigations and highlight possible security weaknesses in the establishments.
22. The requested information in this case is two reports covering the results of recent investigations into disturbances in prison establishments. At the time of the request, the events had only recently occurred, the reports had only just been completed and both events were in the early stages of being considered by the police.
23. The Information Commissioner accepts that the effect of disclosure in this case could 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 (c) and (f) can be adequately linked back to the disclosure of the information in question.

The likelihood of the prejudice

24. 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, the public authority indicated that disclosure 'would' have a prejudicial effect.

Is the exemption engaged?

25. The public authority advised the Information Commissioner that:

"The criminal investigations were begun shortly after the disturbances, and these are still continuing today. The Police have been working with NOMS [National Offender Management Service] and the Crown Prosecution Service to bring charges in court to those individuals deemed responsible for the disturbances. We expect court proceedings to begin in early 2012.

The MoJ is a major part of the criminal justice system, and as such, we are very conscious of the possible prejudice to the administration of justice that disclosure of sensitive information before trials can cause”.

26. The Information Commissioner has viewed the reports. Having duly considered the contents of both reports it is his view that the higher level of ‘would occur’ has been demonstrated in respect of the remaining information. He therefore finds the exemption engaged in relation to this information by virtue of section 31(1)(c) and (f) and he has carried this level of likelihood through to the public interest test.

Section 31(1)(c)

Public interest arguments in favour of disclosing the requested information

27. The public authority has stated the following to the Information Commissioner in respect of this limb of the exemption:
- *The MoJ accepts that there was significant public and media interest in general terms about the events at Warren Hill and Moorland, and a degree of disquiet over how these events could have occurred.*

28. The Information Commissioner agrees with the public authority and recognises the significant public interest in disturbances of this kind and the circumstances which led to such events. He finds that disclosure of the information would therefore further public debate.

Public interest arguments in favour of maintaining the exemption

29. The public authority has also given the following arguments to the complainant in respect of this limb of the exemption:
- *at the time of your original request, the investigations into these disturbances were underway. The Prison Service was conducting its own investigations into the incidents, and the respective Police Forces were also conducting criminal investigations to identify whether any prisoners should be charged with offences resulting from their involvement.*
 - *The Police commenced their investigations into these incidents, and it was considered possible that charges would be brought against the participants, which would lead to court proceedings.*
 - *Criminal investigations are by definition sensitive, not only in terms of the issues dealt with, but also the need for*

confidentiality to avoid contamination of evidence and perversion of the course of justice. It was our view that the disclosure of this information at the time of your original request would prejudice the administration of justice. This was because by revealing the detailed findings of the investigations, which include those conducted by the Prison Service, could lead to individuals involved to alter their evidence and therefore prejudice the ability of the Crown Prosecution Service to bring those offenders to justice. This would not be in the public interest, as it is essential that prisoners who engage in such behaviours are held to account for their actions, including by being tried in the criminal courts.

- *At the time of your original request, investigations into the incidents by both respective Police Forces, South Yorkshire Police in the case of HMP Moorland, and Suffolk Police in respect of HMYOI Warren Hill, were active. This meant that in our view the information was exempt from disclosure as disclosure could prejudice those investigations, and prejudice the ability of the CPS to bring the perpetrators to justice. Both police investigations remain ongoing, albeit they are more advanced at this time.*

30. It has further advised the Information Commissioner

- *The reports were shared with the Police Forces who are conducting the criminal investigations into the incidents, and these documents, alongside the information obtained from the Police in the course of their enquiries, directly relate to the impending prosecutions.*
- *We expect court proceedings to commence in early 2012, and it is our view that some of the information in respect of Moorland, and all of the information in respect of Warren Hill, would, if disclosed into the public domain, prejudice the apprehension and prosecution of offenders, and the administration of justice.*
- *It is essential that the Police are able to investigate criminal offences thoroughly, and treat the evidence gathered in strict confidence. The Police have to have the ability to consider the evidence to identify whether offences have been committed, and if so, whether the individuals concerned should be charged and taken to court. The Crown Prosecution Service also plays a vital part in this process.*

- *Disclosure of this information would, in our view, directly prejudice the ability of the Police to bring those responsible to justice, as it would constitute the disclosure of material evidence that is related to the impending court proceedings.*
- *It is also essential to ensure that the judiciary are able to deliver justice in these cases, and hold those who have committed offences to account. The rules of court allow for disclosure of information relevant to the parties to the proceedings. This helps ensure that both sides of a criminal case have access to the relevant information to assist in their case, and to help ensure a fair trial.*
- *The information contained within the two reports that we are withholding has a significant overlap with the information obtained by the Police during their investigations. For example, the descriptions in these reports of the sequence of events, and action by individuals, will also be referred to in witness statements obtained by the Police.*
- *Disclosure of the information into the public domain prior to the proceedings could lead to witness or other parties altering their evidence once they knew what other information was held relating to the incident. Such an outcome could result in the judiciary being unable to deliver justice, and would risk a collapse of the trials and possible retrials.*
- *This would not be in the public interest, not only on cost grounds, but also on the grounds that trials must be allowed to proceed according to the rules of court. There is also a very strong public interest in ensuring that those individuals charged with offences receive a fair trial. If parties to the proceedings altered their evidence as a result of disclosure of this information, this could create a risk that those charged did not receive a fair trial.*
- *This would not only be harmful to the individuals concerned, but also result in a much wider and more serious negative impact by damaging public confidence in the judicial system, and the principle of fair trials which is the cornerstone of our judicial system.*

Balance of the public interest arguments

31. The public authority has advised the Information Commissioner that its:

"... balancing exercise involved taking into full account the gravity of the disturbances, the effect they had on the prison estate, the impact on public perceptions of the safety and security of that estate and the ongoing criminal investigations being conducted by the two respective Police Forces."

32. The Information Commissioner notes that the passage of time can obviously have a bearing on the public interest and the likelihood of prejudice. However, whilst it is now more than a year since the disturbance occurred, the request was actually made very shortly after the event. As mentioned earlier, the Information Commissioner must consider the situation at the time the request was made.
33. The Information Commissioner accepts that disclosure of the information in this case would provide the public with an insight into the events that happened and allow it to formulate a view regarding any shortfalls which may have contributed to possible criminal acts. It would be likely to further public debate regarding ways that such disturbances may have been foreseen or been prevented.
34. 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.
35. 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.
36. Furthermore, the Information Commissioner also accepts that the events were very recent at the time of the request and investigations were still underway by both the public authority itself and the police forces associated with each establishment.
37. The police investigations have been to establish whether any prisoners should be charged with offences resulting from their involvement. At the time of the request it was considered possible that charges would be brought, which would lead to court proceedings; these considerations have proved to be well founded in that court proceedings are due to commence next year.

38. Whilst the Information Commissioner realises that there will be an interest in knowing 'what went wrong', particularly with a view to ensuring there is no repetition, he considers that it is vital to the justice system that no information is released which could prejudice any proceedings before justice has been served. Once the criminal investigations have been completed then this will obviously present a different picture and a future request may result in the Information Commissioner drawing a different conclusion.
39. In conclusion, the Commissioner finds that the weighty public interest arguments in favour of maintaining the exemption outweigh the public interest arguments for disclosure.
40. In view of this the Information Commissioner will not consider the applicability of section 31(1)(f).

Other matters

41. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern.

Internal review

42. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
43. Although the Commissioner accepts that the circumstances in this case can be viewed as 'exceptional', he considers that the length of time taken to conduct the internal review to be a cause for concern.

Right of appeal

44. 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

45. 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.
46. Any notice of appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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