

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2012

Public Authority: Home Office¹
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information related to the checks conducted by customs officers at the Port of Dover.
2. The Commissioner's decision is that the public authority was correct to withhold the information it held on the basis of the exemptions at sections 31(1) (a) and (d), and 40(2) of the Freedom of Information Act 2000 (the Act).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 31 March 2011 the complainant wrote to public authority and requested information. The request was phrased as follows:

'.....copies of all guidance provided for Customs Officers relating to which light vehicles/drivers to stop and interview and what circumstances should lead to the vehicle being detained whilst a search is undertaken and identity checks undertaken.....if you consider that some of the relevant documents should not be released would you please, nevertheless, tell me their titles and dates of publication.....'
(part 1)

¹ The complaint was made against the UK Border Agency, an Executive Agency of the Home Office which is a public authority for the purposes of the Freedom of Information Act 2000. The Home Office is therefore named as the public authority for that reason.

Secondly could you please provide me with, or tell me where I might find, your latest statistics regarding the number of cars and light vehicles stopped daily at Dover Port, and how many are detained in the garages for further interviews/inspections. Additionally, I would like a breakdown of the number and nature of offences detected as a result of these activities and the respective percentage of offences detected as a result of (a) prior intelligence and (b) random checks.' (part 2)

5. The public authority responded on 9 May 2011. A redacted copy of the relevant guidance held in relation to part 1 of the request was disclosed. The redacted information was withheld on the basis of sections 31(1) (a) and (d) of the Act. Information held pursuant to part 2 of the request was also withheld on the basis of the exemption at section 31(1)(e).
6. Following an internal review the public authority wrote to the complainant on 13 June 2011. An up to date version of the guidance held in relation to part 1 of the request was provided. However, the remaining information held in relation to both parts 1 and 2 of the request was withheld on the basis of the exemptions at sections 31(1) (a), (d), (e) and 40(2) of the Act.

Scope of the case

7. On 4 July 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to rule on the public authority's decision to withhold the information held (the disputed information) in relation to his requests above.
8. During the course of the investigation the public authority clarified that the information relevant to part 1 of the request had been withheld solely on the basis of the exemptions at sections 31(1) (a), (d) and 40(2) of the Act. While information relevant to part 2 of the request had been withheld solely on the basis of the exemption at sections 31(1) (a) and (d).
9. In relation to part 2 of the request, the public authority further clarified that it held the following information:

For each month from April 2010 to March 2011 at the Port of Dover, the total number of cars intercepted, the total number of cars subjected to further examination, the type of offences uncovered, and the total number of times each offence was detected.

10. The complainant confirmed that he was content for the investigation in relation to part 2 of the request to be restricted to the information described above.
11. The scope of the investigation therefore was to determine whether:
 - Sections 31(1) (a), (d) and 40(2) were engaged in respect of the information withheld from disclosure pursuant to part 1 of the request above, and
 - Sections 31(1) (a) and (d) were engaged in respect of the information withheld from disclosure (as described at paragraph 9 above) pursuant to part 2 of the request above.

Reasons for decision

Part 1 of the Request

Disputed Information

12. A redacted copy of a document entitled 'Tourist Selection Indicators and Selection Techniques' was disclosed to the complainant in response to part 1 of his request. Information was specifically redacted from Annex A which is entitled 'Selection Criteria Tourist Area'. This information was withheld under sections 31(1) (a) and (d). The names of individuals were also redacted throughout the document on the basis of the exemption at section 40(2).

Exemptions

13. In view of the overlap between the considerations for both exemptions at sections 31(1) (a) and (d), the public authority provided a single explanation to justify the use of both exemptions to withhold the disputed information within the scope of part 1 of the request. The Commissioner agrees with this approach in the circumstances of this case and he has therefore also assessed the application of both exemptions on the strength of the single submission by the public authority.

Section 31(1) (a) and (d)

14. Information which is not exempt from disclosure on the basis of section 30 (investigations and proceedings conducted by a public authority) of the Act is exempt from disclosure on the basis of section 31(1)(a) if it would, or would be likely to prejudice the prevention or detection of crime, and on the basis of section 31(1)(d) if it would, or would be likely to, prejudice the assessment or collection of any tax or duty or of any imposition of a similar nature.

15. The public authority submitted that disclosing the disputed information within the scope of part 1 of the request would be likely to prejudice the interests at sections 31(1) (a) and (d). It argued that the disputed information could assist potential offenders and those wishing to evade paying tax or duty. Knowledge of the information would, it argued, put someone at a clear advantage in circumventing customs controls and consequently avoiding detection. The public authority therefore strongly submitted that there is a real risk people would modify their behaviour or respond differently if they exactly what customs officers were looking for.
16. The disputed information, as suggested, is a guide of the indicators customs officers are expected to be on the look out for before selecting an individual or group of individuals for questioning and possible examination of their vehicles and/or baggage. The Commissioner agrees with the public authority that disclosing the disputed information would result in a real and significant risk of individuals evading detection at the Port of Dover, and most likely other Ports in the UK. The disputed information reveals the pre-selection techniques/criteria employed by customs officials and it would unarguably assist those who seek to circumvent customs controls and procedures at the Port of Dover. The Commissioner accepts that disclosure of the information would also prejudice the detection of crime, in addition to the detection of people seeking to evade customs controls. The information could also assist those seeking to evade detection when smuggling prohibited weapons or drugs and therefore the impact on crime prevention and detection.
17. The Commissioner therefore finds that the disputed information was correctly exempt from disclosure on the basis of sections 31(1) (a) and (d) of the Act.

Public Interest Test

18. Both exemptions at sections 31(1) (a) and (d) are however subject to a public interest test. The Commissioner must therefore also decide whether in all the circumstances of the case, the public interest in maintaining the exemptions outweighed the public interest in disclosing the disputed information. The Commissioner will carry out this for each exemption separately.
19. In favour of disclosure, the public authority recognised the public interest in allowing the public to assess whether it is adequately carrying out its functions with regard to the prevention or detection of crime and the collection and assessments of taxes and duties.
20. It is also acknowledged that the disputed information could reassure the public that there are effective systems in place to ensure that

customs officials at the border have robust procedures in place to exercise customs functions in a way that is necessary and proportionate.

21. In favour of maintaining both exemptions the public authority argued that there is a strong public interest in maintaining 31(1)(a), protecting the process of preventing and detecting crime, and also a strong public interest in maintaining section 31(1)(d) to prevent prejudice to the process of assessing and collecting taxes or duties.

Balance of the public interest

22. The Commissioner agrees with the public interest arguments identified by the public authority in favour of disclosure. The Commissioner also considers that there is a significant public interest in enabling the public to understand how customs officers at the Port of Dover carry out their functions and to scrutinise whether the approach is proportionate to the nature of the risks anticipated.
23. Nevertheless, the Commissioner agrees with the public authority that there is a very significant public interest in not disclosing information which, in the wrong hands, presents a real and significant risk of increased crime. There is also a very significant public interest in not providing those who wish to circumvent customs controls at the Port of Dover with information likely to assist them to achieve their objective.
24. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exemption section 31(1)(a) outweighs the public interest in disclosing the disputed information within the scope of part 1 of the request. The Commissioner also finds that in all the circumstances of the case, the public interest in maintaining the exemption section 31(1)(d) outweighs the public interest in disclosing the disputed information within the scope of part 1 of the request.

Section 40(2)

25. As mentioned, the public authority also relied on the exemption at section 40(2) to withhold information within the scope of part 1 of the request.
26. The public authority specifically redacted the names of three junior officials from the disclosed guidance entitled; 'Tourist Selection Indicators and Selection Techniques' on the basis of section 40(2).
27. Information is exempt from disclosure on the basis of the exemption at section 40(2) if the information constitutes personal data and either the first or second condition in section 40(3) is satisfied.

Do the names of the junior officials constitute Personal Data?

28. Personal data is defined in section 1(1) of the Data Protection Act 1998 (the DPA) as:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'

29. The names relate to identifiable individuals and clearly constitute their personal data as defined by the DPA.

Would the disclosure of the redacted names contravene any of the Data Protection Principles?

30. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that the disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

31. The first data protection principle states:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

32. The Commissioner first considered whether disclosing the redacted names would have been fair to the individuals in question.

33. The public authority explained that it redacted these specific names because the junior officials in question would have a reasonable expectation that their names, in the context of the guidance, would not be disclosed under the Act. According to the public authority, this expectation is reasonable because the junior officials did not exercise a significant level of personal judgement and responsibility in relation to the guidance. It also claimed that correspondence from its officials have in the past been published on social networking sites and 'anti-customs chat rooms' which resulted in officials been targeted and victimised by those who did not agree with them. Given the reasonable expectations of the 3 junior officials in question, the public authority

submitted it would be unfair to disclose their names in the context of the guidance.

34. Given that the officials were junior officials (at the time of the request) who had not exercised any significant degree of personal judgement and responsibility in relation to the guidance, the Commissioner agrees they had a reasonable expectation that their names would not be made publicly available in the context of the guidance. The public authority did not provide any specific evidence in support of its claim that officials had been victimised in the past after their correspondence was published on the internet. Nonetheless, the Commissioner accepts that the nature of the information could lead to the officials being targeted and this is an additional factor that makes the disclosure unfair given the distress this could cause.
35. The Commissioner therefore finds that disclosing their names would have been unfair and in breach of the first data protection principle.
36. The Commissioner consequently also finds that their names were correctly exempt from disclosure on the basis of section 40(2) of the Act.

Part 2 of the Request

Disputed Information

37. As mentioned, the complainant considered the following information sufficient in respect of part 2 of his request:
38. For each month from April 2010 to March 2011 at the Port of Dover, the total number of cars intercepted, the total number of cars subjected to further examination, the type of offences uncovered, and the total number of times each offence was detected.

Exemption

39. As mentioned, the public authority claimed that the disputed information within the scope of part 2 of the request was also exempt from disclosure by virtue of sections 31(1) (a) and (d) on the grounds that it would be likely to prejudice the applicable interests.
40. The Commissioner also reviewed the application of both exemptions together in view of the overlap in the interests to be considered.
41. The public authority's submissions on the application of both exemptions are substantively similar to its submissions in relation to part 1 of the request. Specifically however, it argued that disclosing location specific statistics could potentially compromise detection operations at the Port of Dover. It could allow criminal organisations to

build up patterns in relation to the number of vehicles stopped at the Port of Dover. It further argued that if similar information for other Ports was disclosed, criminal organisations could target their activities on Ports which they consider that the lower stop rates equates to less detection rates.

42. The Commissioner finds that both exemptions at sections were correctly engaged in relation to this part of the request for the same reasons he found the information held in respect of part 1 of the request above was exempt from disclosure. He also agrees with the public authority that it is quite feasible that disclosure in this case could lead to individuals or criminal organisations targeting other Ports of entry into UK with lower stop rates as a result of the disclosure of similar information for those Ports. In other words, whilst the disputed information is for one Port of entry, it could lead to requests for similar information for other Ports that could be combined to expose a pattern of stop rates at Ports of entry in general.

Public Interest Test

43. The Commissioner finds that the public interest in maintaining the exemptions outweighed the public interest in disclosure for the same reasons he found that the public interest was not in favour of disclosing the disputed information for part 1 of the request. He specifically finds that there is a strong public interest in preventing individuals intending to avoid controls at any of the Ports of entry to have access to information which could assist them in building a pattern of detection rates for any or all of the Ports of the entry into the UK.
44. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exemption section 31(1)(a) outweighs the public interest in disclosing the disputed information within the scope of part 2 of the request. The Commissioner also finds that in all the circumstances of the case, the public interest in maintaining the exemption section 31(1)(d) outweighs the public interest in disclosing the disputed information within the scope of part 2 of the request.

Right of appeal

45. 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

46. 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.
47. 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

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