

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 January 2012

**Public Authority:** Department for Transport  
**Address:** Great Minister House  
76 Marsham Street  
London  
SW1P 4DR

### Decision (including any steps ordered)

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1. The complainant requested copies of the independent assessments of the performance of security scanners at UK airports.
2. The Commissioner's decision is that the public authority was correct to withhold the information held on the basis of the exemption at section 24(1) 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

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4. On 7 June 2011 the complainant wrote to the public authority and requested information. The request was phrased as follows:  
*'I would like to request the following information.....*
  - i. *All risk assessments carried out for the use of ionising radiation in security scanners for airport security,*
  - ii. *Which radiation protection experts were consulted and what their responses were,*
  - iii. *The independent assessments of the security performance of security scanners installed at UK [United Kingdom] airports.*
5. The public authority responded in an undated letter and disclosed the information held in relation to items i and ii of the request. The information held in relation to item iii was however withheld on the basis of the exemption at section 24(1) of the Act.

6. Following an internal review the public authority wrote to the complainant on 19 August 2011. It upheld the decision to withhold the information relevant to item iii of the request on the basis of the exemption at section 24(1) of the Act.

## Scope of the case

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7. On 31 August 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 information relevant to item iii of his request above (the disputed information).
8. The Commissioner identified the following salient points from the representations the complainant made both to the public authority and the Commissioner in support of disclosure:
9. Based on findings from the research he had conducted, the effectiveness of UK airports' security scanners as a means of preventing criminal activities (including acts of terrorism) is questionable or at least unproven.
10. The associated health risks of exposure to ionising radiation from the security scanners enhance the public interest in disclosing the assessments. He specifically claimed that the 'ALARP principle'<sup>1</sup> was not followed by the public authority in its assessments of the potential health risks from exposure.
11. Relying on the exemption at section 24(1) to withhold the disputed information decreases public confidence in government and raises suspicions.

## Reasons for decision

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### Disputed Information

12. Due to the sensitivity of the disputed information, the public authority declined to either send it via email or in the post to the Commissioner.
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<sup>1</sup> ALARP stands for 'as low as reasonably practicable'. It is commonly referred to in health and safety terms. It is, broadly speaking, a requirement to demonstrate that the health risks are quite minimal or insignificant in comparison to the associated benefits from an activity or the use of equipment.

It instead requested for the information to be reviewed by the Commissioner at its London office. On 10 November 2011, the Commissioner's representative reviewed the disputed information in London as requested by the public authority.

13. A schedule of the disputed information can be found in the confidential annex to be disclosed to the public authority only. To reveal the information contained in the schedule in the main body of this notice would defeat the purpose of the exemption at section 24(1).

#### Section 24(1)

14. By virtue of section 24(1), information is exempt from disclosure if the exemption from the duty to disclose the information is 'required' for the purpose of safeguarding national security. It should be noted that in order to engage section 24(1), it is the exemption, rather than the information which has to be required for the purpose of safeguarding national security. The Commissioner therefore considers that the focus under section 24(1) is on the effect of disclosing the withheld information rather than its purpose.
15. Furthermore, the Commissioner considers the word 'required' in the context of the exemption means 'reasonably necessary' and it is not sufficient that the information withheld 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 that the disclosure is capable of indirectly creating a real possibility of harm to national security.
16. The Commissioner considers the term 'national security' includes the security of the UK and its citizens.
17. As mentioned, the relevant request was for the independent assessments of the performance of the security scanners deployed at UK airports.
18. The threats (including terrorist threats) to UK aviation safety are well documented. Some of the measures put in place by the government to protect the public including individuals who work at, or travel from/to, UK airports are also commonly known. For instance, it is commonly known that security scanners are deployed at UK airports to, amongst other things, prevent terrorist attacks.
19. The Commissioner therefore finds that the disputed information relates to the security of the UK and its citizens and by extension, 'national security' within the meaning of section 24(1).

### Effect of disclosure

20. The public authority explained that it evaluates and tests security equipment and techniques to establish satisfactory performance (including internationally agreed performance standards) before deployment in the UK for a transport security environment. The disputed information broadly comprises of the testing methodologies developed for the security equipment and techniques. The tests include, but are not limited to, the threat items to be detected, concealments of explosives, detection rates and minimum false alarm rates.
21. According to the public authority, the European Civil Aviation Conference (ECAC) sets the standards for equipment testing and develops common testing methodologies which all ECAC Member States can sign up to. A Common Evaluation Process (CEP) is also used by test centres responsible for assessing the effectiveness of the equipments and techniques.
22. The public authority explained that manufacturers are informed of the general outline of the test methodology but are not given any definitive details about exactly what tests will be conducted and what the test items will be. Following a CEP, test centres are permitted to provide general feedback but are not permitted to give the detailed results of the test to the manufacturer.
23. The public authority strongly submitted that if the disputed information was to be made publicly available, it would significantly enhance the chances of individuals or groups intending to carry out criminal activities at, or through, UK airports, avoiding detection.
24. The public authority explained that the European aviation security community relies on manufacturers developing equipment to a general threat set and not just a specific test set. It therefore submitted that if manufacturers become aware of the details of a common test methodology, they could devise equipment to the meet the test exactly. However, because it is not possible to test equipment for every conceivable threat, a test can only ever be used as a subset of potential threats. Similarly, if manufacturers knew the exact results of tests, they could potentially tailor the equipment to specifically pass the test. This, the public authority argued, would effectively diminish the generic threat detection capability of UK airport security scanners.
25. The public authority also pointed out that disclosing the disputed information will not only be detrimental to UK aviation security, it would also impact on security in all other Member States of the ECAC as it would reveal ECAC common test methodologies.

26. The Commissioner agrees with the public authority that the disputed information would be very useful to those who wish to use UK airports for criminal activities including individuals or groups who pose a terrorist threat to the UK's aviation industry.
27. The Commissioner also agrees it is very likely manufacturers would be more inclined to tailor equipment to meet the common test methodology and outcomes of specific evaluations if they were provided with the disputed information. Developing tailor made equipment would diminish the generic threat detection capability of the scanners and weaken the security measures deployed at UK airports. Disclosing the disputed information would therefore have a prejudicial impact on national security in that respect.
28. A detrimental impact on airport security in other ECAC Member States also has a corresponding impact on UK security measures as subsequent actions taken to strengthen security arrangements in the UK could potentially be diminished by the weakened security measures of other ECAC Member States.
29. In view of the nature of the disputed information and the compelling arguments provided by the public authority, the Commissioner finds that the exemption at section 24(1) is reasonably necessary in the circumstances to safeguard national security.

#### Public Interest Test

30. Section 24(1) is however subject to a public interest test. The Commissioner must therefore consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure.
31. In favour of disclosure, the public authority acknowledged that the public has a right to know about the use of invasive technologies at UK airports. Disclosing the disputed information could therefore reassure the public and increase public confidence in the security arrangements at UK airports.
32. The public authority also recognised the general public interest in promoting openness and transparency and acknowledged that disclosing the disputed information would further the public interest in that respect.
33. Against disclosure, the public authority submitted that there is a clear and strong public interest in safeguarding the security of passengers and goods in all modes of transport in the UK, including aviation.
33. According to the public authority, it is well documented that terrorists continue to seek to avoid or subvert aviation security measures.

Disclosing the disputed information would significantly undermine aviation security by helping terrorists identify vulnerabilities, or develop ways to circumvent the measures. It would not be in the public interest to compromise the national security of the UK by undermining the security measures deployed at airports.

#### Balance of the Public Interest

34. The Commissioner agrees with the public authority that there is a strong public interest in ensuring the public are aware of the nature of the scanners deployed at the airports which the public might consider invasive. He however also agrees that this has to be balanced against the need to maintain the effectiveness of the scanners as a security measure. Disclosing information which undermines their security effectiveness would not be in the public interest.
35. The Commissioner disagrees with the complainant that there is conclusive proof that scanners are not an effective security measure. There is certainly an ongoing debate regarding the effectiveness of airport scanners in detecting all items prohibited on aircrafts or at airports. However, there is no conclusive evidence to suggest they are of little or no value as a security measure. Security scanners are part of a range of security measures deployed at UK airports and to diminish their effectiveness by exposing their vulnerabilities in effect undermines airport security as a whole.
36. The Commissioner also disagrees with the complainant that the ALARP principle was not followed by the public authority in its consideration of the associated health risks of exposure to ionising radiation from airport scanners. In its initial response to the complainant's request, the public authority explained that a risk assessment had been conducted by the Health Protection Agency and explained how he could obtain a copy of the relevant assessment. The public authority also explained that the Health and Safety Executive had been consulted specifically in relation to the health risks from the technology used in the scanners. Finally, the complainant did also note that the public authority informed him on 6 July 2011 that, 'The ALARP principle has been followed, and the Department believes that the use of Security Scanners in detecting prohibited items outweighs the potential risks associated with ionising radiation.' The Commissioner considers the steps taken by the public authority demonstrate that the potential health risks from the use of scanners were a matter of serious consideration before their deployment at UK airports. It is in any event debateable whether the disputed information would be specifically relevant in this regard. The Commissioner therefore finds that the public interest in disclosure for health and safety reasons (which, for the avoidance doubt, the Commissioner considers to be a compelling

public interest for disclosure) is significantly diminished by these factors.

37. The Commissioner agrees with the complainant that there is a strong public interest in maintaining public confidence in the government. However that confidence could be eroded if information is publicly disclosed which would undermine the government's ability to protect the aviation industry and consequently, the public.
38. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exemption at section 24(1) outweighs the public interest in disclosure.

## Right of appeal

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39. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

40. 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.
41. 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 .....**

**Gerrard Tracey  
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