

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 July 2012

**Public Authority:** The Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested copies of the licenses issued by the Home Office to GW Pharmaceuticals allowing it to cultivate, possess and supply cannabis. The Home Office refused to disclose the licenses on the following exemptions section 31(1)(a) (prevention or detection of crime); section 41 (information provided in confidence) and section 43(2) (commercial interests). During the course of the Commissioner's investigation the Home Office explained that it was also seeking to rely on section 40(2) (personal data) to withhold the name of an individual identified on the licenses. The Commissioner has concluded that the Home Office is entitled to rely on the exemptions contained at sections 31(1)(a) and 40(2) to withhold the information requested by the complainant.

#### Request and response

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2. On 25 November 2011, the complainant wrote to the Home Office and requested information in the following terms:

*'Under the Misuse of Drugs Act 1971, the Home Secretary is able to issue licences covering production, possession and supply of any controlled drug. GW Pharmaceuticals has been granted such licences in relation to cannabis. I hereby request that a copy of all said licences relating to GW Pharmaceuticals and cannabis, and all secondary requirements such as fees, terms and conditions etc., be provided.'*

3. The Home Office responded on 16 December 2011. It confirmed that it held the licences requested but considered these to be exempt from disclosure on the basis of sections 30(1)(a), 41 and 43 of FOIA. The Home Office explained that information regarding the fees which organisations are charged when applying for Home Office Controlled Drug Licences was available on its website and therefore this information was being refused on the basis of section 21.
4. The complainant contacted the Home Office on 17 December 2011 and asked for an internal review to be undertaken of the decision to withhold copies of the licences.
5. The Home Office informed him of the outcome of the internal review on 16 January 2012. The review upheld the application of the exemptions, clarifying that it was section 31(1)(a) rather than 30(1)(a) that it was in fact seeking to rely on in addition to sections 41 and 43.

### **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the Home Office's decision to withhold the licences issued to GW Pharmaceuticals on the basis of the exemptions contained at sections 31, 41 and 43 of FOIA. The complainant highlighted a number of reasons why he believed that these exemptions did not provide a basis to withhold the licences he requested. The Commissioner has made reference to the complainant's submissions in the relevant sections of his analysis below. The Commissioner established with the complainant that he was not complaining about the Home Office's handling of the second part of his request which sought information about the fees and terms and conditions.
7. During the course of the Commissioner's investigation the Home Office explained that in accordance with the provisions of the Misuse of Drugs Regulations 2001 an individual is required to be named on each license as the authorised person to supervise the destruction of cannabis held at the licensee's premises. The Home Office explained that it considered the name of the individual named on the requested licenses was exempt from disclosure on the basis of section 40(2) of FOIA.

## Reasons for decision

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### Section 31 – law enforcement

8. Section 31(1)(a) of FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
9. In order for a prejudice based exemption, such as section 31(1)(a), to be engaged the Commissioner believes that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

#### *The complainant's position*

10. The complainant explained that the location of GW Pharmaceuticals facilities were already public knowledge, namely its headquarters at Porton Down, Wiltshire and at the Kent Science Park, Sittingbourne. Therefore it was irrational for the Home Office to argue that the disclosure of the licenses would make GW Pharmaceuticals targets of criminal activity as the locations for cultivation were already in the public domain.

#### *The Home Office's position*

11. The Home Office explained that there were two broad reasons why it believed that disclosure of the requested licences could harm the authorities' ability to prevent and detect crime.

12. Firstly, the licences contain the addresses of specific sites where possession or cultivation of cannabis is permitted, and for some licenses the locations of a specific building on the specified sites. Releasing such information could result in any one of these sites becoming targets of criminal activities for those wishing to steal the cannabis either for misuse and/or resale. The Home Office emphasised that the plants and drugs in question were extremely desirable and valuable to the illicit drugs market. The Home Office noted that for the majority of licensed sites the addresses contained on the licences do not have any possible connection to the cultivation of any plants, be it cannabis or other types of plant, and thus disclosure of the licenses would alert those with a criminal intent to locations where such plants are grown. The Home Office explained that in the past some licensed sites have been the target of break-ins and sabotage attempts. With regard to the complainant's suggestion that the location of GW Pharmaceuticals facilities were publically available, the Home Office explained that the assumption that such sites were licensed was merely that, an assumption. Disclosure of all of the requested licenses would reveal whether or not that assumption was correct and this could be prejudicial for the reasons previously discussed.
13. Secondly, the Home Office explained that even disclosure of versions of the licenses with the addresses redacted would still be likely to aid criminal activity. This is because the disclosure of redacted licenses would aid those with criminal intentions to create forged versions of the licenses. This could lead to criminal activity in the supply and distribution of cannabis plants through suppliers and distributors being unaware that they were working with unlicensed sites. Indeed disclosure of the format of the licenses – via disclosure of the specific licenses falling within the scope of this request – could put an extremely large number of Home Office licenses for controlled drugs at risk of fraudulent activity.

#### *The Commissioner's position*

14. The Commissioner accepts that the Home Office's position that disclosure of the licenses could lead to the theft of cannabis plants and lead to the forgery of drugs licenses are both reasons that are clearly applicable interests falling within the scope of section 31(1)(a).
15. With regard to the second criterion the Commissioner accepts that there is a causal link between prejudice to the prevention and detection of crime and disclosure of specific locations where cannabis plants are cultivated and/or stored. Similarly, he also accepts that there is causal link between the prevention and detection of crime and the disclosure of information which could lead to the creation of forged licences and thus the integrity of the system for licensing controlled drugs being

undermined. Furthermore, the Commissioner is satisfied that the nature of prejudice that could occur in both scenarios is one that is clearly real and of substance.

16. In relation to the third criterion, the Commissioner understands that in respect of the addresses of the cultivation sites the Home Office is relying on the higher limb of the prejudice test, i.e. that prejudice would occur following disclosure of such information. For the remainder of the information contained on the licences – i.e. the information relevant to the argument that disclosure could result in the creation of forgeries – the Commissioner understands that the Home Office is relying on the lower limb of the prejudice test, i.e. that disclosure would be likely to occur following disclosure of this information.
17. The Commissioner is satisfied that the disclosure of the specific site locations recorded on the various licences would prejudice the prevention and detection of crime. He has reached this conclusion given the direct and obvious way disclosure of such information would assist those with criminal intentions, i.e. it would reveal the specific locations of cannabis plants. Given the value and desirability of such plants to those involved in the illicit drugs trade it is, in the Commissioner's view, very likely that such information would be used by such individuals to for criminal purposes. The Commissioner believes that the fact that licensed sites have been targeted in the past provides notable support for this conclusion. With regards to the complainant's counter argument regarding the publically available addresses of GW Pharmaceuticals facilities, the Commissioner believes that the Home Office's comment summarised at the end of paragraph 12 sufficiently explains why he does not believe that the complainant's point affects his conclusion that the exemption is engaged.
18. The Commissioner also accepts that disclosure of even redacted copies of the licenses would be likely to result in prejudice to the prevention and detection of crime. In accepting this argument the Commissioner has again placed weight upon the clear incentive for individuals with criminal intentions to attempt to secure cannabis plants and the fact that the licenses themselves would be relatively easy for a motivated individual to forge.
19. The Commissioner is therefore satisfied that the exemption contained in section 31(1)(a) of FOIA provides a basis to withhold all of the licenses falling within the scope of the complainant's request.

### **Public interest test**

20. Section 31 is a qualified exemption and subject to the public test at section 2 of FOIA. Therefore the Commissioner must consider whether in

all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of maintaining the exemption**

21. The Home Office argued that it was clearly not in the public interest to disclose information which would encourage, or aid, criminal activity, which in the specific circumstances of this case would manifest itself in the form of criminal activity focused on licensed cannabis sites, or more broadly, the establishment of illegal supply and distribution chains. The Home Office suggested that if specific sites were damaged and the cultivation of cannabis plants required for medical research was delayed this would be against the public interest as the potential medical advancements may not happen in the UK. Furthermore, it was clearly in the public interest to have a secure and robust licensing system for the cultivation, possession and supply of controlled drugs for use in medical research.
22. The Home Office also argued that the disclosure of the exact sites of the cultivation of plants, or names of companies and individuals licensed to cultivate such plants adds nothing to the public's understanding of the development of research into potential uses of medical cannabis. The Home Office specifically noted that the lack of such information being placed into the public domain did not inhibit or restrict research by bona fide institutions or companies with the relevant expertise who make, and are successful in, obtaining a license themselves.

### **Public interest arguments in favour of disclosing the requested information**

23. The Home Office acknowledged that it was in the public interest to disclose information that would provide reassurance that the process of licensing cannabis for the medical research is done under specific restrictions and safety procedures. Disclosure of the licenses requested in this case could inform the public as to nature of such measures in relation to the Home Office's decision to license GW Pharmaceuticals to cultivate, possess and supply cannabis plants.
24. In his submissions to the Commissioner the complainant outlined a number of reasons why he believed disclosure of the requested information was in the public interest. The Commissioner has summarised these arguments below:
25. The complainant believes that the Home Office's refusal to provide the requested information was part of a broader policy of secrecy, subterfuge and deception concerning cannabis, particularly its use as a medicine. In the complainant's view the Home Office's refusal to provide

the information he requested was in order to cover up its dishonest and corrupt relationship with GW Pharmaceuticals and part of its policy of public disinformation about cannabis and its medical benefits.

26. In particular the complainant argued that Misuse of Drugs Act 1971 provides for the Home Secretary to issue licenses for 'special purposes' for the production of cannabis. In the complainant's view the Home Office claimed that this refers to 'research' and implicitly this is not for commercial purposes. However, the response to the request makes it clear that GW Pharmaceuticals' production of cannabis is for commercial purposes. The complainant suggested that the reality was that the Home Office had granted GW Pharmaceuticals an unlawful monopoly of medicinal cannabis and seeks to unlawfully prevent any other company or person engaging in the production of cannabis for commercial and/or medicinal purposes.
27. With regards to the 'disinformation campaign' the Home Office was allegedly engaged in with GW Pharmaceuticals, the complainant argued that this falsely asserted that there was no medicinal value in cannabis; that Sativex is not cannabis but an extract of only two components of cannabis; and that Sativex did not produce the euphoric effect associated with cannabis.<sup>1</sup>

### **Balance of public interest arguments**

28. The Commissioner agrees that it is important for the public to have confidence in the system under which the Home Office licences the use of controlled drugs for the purposes of medical research. Disclosure of information associated with the licensing process, in this case copies of the actual licenses themselves issued to GW Pharmaceuticals regarding cannabis plants, could reassure the public that sufficiently stringent and secure processes are in place regarding the licensing of such drugs.
29. Furthermore, the Commissioner recognises that the complainant has clear concerns about the Home Office's decision to provide GW Pharmaceuticals with the licenses which are the focus of his request. The Commissioner accepts that disclosure of the requested information could, potentially, go some way to counter acting the complainant's suspicions of a cover up between the Home Office and GW Pharmaceuticals by revealing, as it would, the basis upon which these specific licenses were granted.

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<sup>1</sup> Sativex is cannabinoid medicine produced by GW Pharmaceuticals.

30. However, having considered content of the licenses, in the Commissioner's view it is difficult to see how their disclosure would aid the public's understanding of the development of research into potential uses of medical cannabis. In particular it is difficult to see how disclosure of the licenses would address the complainant's specific concerns around the alleged disinformation campaign regarding Sativex. Such findings are particularly relevant to the addresses of the sites themselves, but also apply to the remainder of the information contained on the licenses.
31. The Commissioner believes that it is very strongly in public interest in ensuring that the licensing regime is not compromised by either revealing sites where cannabis plants are cultivated/stored or by undermining the integrity of the supply chain. Furthermore, and in contrast to the public interest arguments in favour of disclosure, it is very clear to the Commissioner how disclosure of the withheld licenses could result in these prejudicial effects. The Commissioner has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure of the requested information.

#### **Section 40 – personal data**

32. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act (the DPA). The Home Office argued that disclosure of the name of the individual authorised to supervise the destruction of the cannabis plants would be unfair and thus breach the first data protection principle which states that:

'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.'

33. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

'...data which relate to a living individual who can be identified

- a) from those data, or
- b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,



and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

34. The Commissioner is satisfied that the name of the authorised person as it appears on the licenses clearly constitutes personal data because it relates directly to an identifiable individual.

35. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
  - what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
  - the nature or content of the information itself;
  - the circumstances in which the personal data was obtained;
  - particular circumstances of the case, e.g. established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
  
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
  - whether information of the nature requested is already in the public domain;
  - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

36. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.

37. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
38. The Home Office has argued that the individual named as the authorised person on the licenses would have believed that their personal data would not be released to an audience not specifically required to have sight of the licences. Disclosure of the name of the authorised person would therefore be unfair as it would be against their reasonable expectations. (The Home Office explained that companies who are granted the licenses are not required to display their licenses openly, but are required to present it upon the request of the Police or another company in the supply chain who would want to be assured that they are working with a body which is licensed by the Home Office.)
39. The Commissioner is satisfied that given the limited distribution of the licenses, disclosure of the name of the authorised individual under FOIA would clearly be against their reasonable expectations and he is satisfied that the disclosure would be unfair for the reasons asserted by the Home Office. Furthermore the Commissioner believes that there is no legitimate and compelling public interest which would require the disclosure of such information. The Commissioner has therefore concluded that the Home Office has applied section 40(2) correctly.

### **Other exemptions**

40. In light of his findings in relation to sections 31(1)(a) and 40(2) the Commissioner has not considered the Home Office's reliance on sections 41 and 43(2) of FOIA.

## Right of appeal

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41. 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)

42. 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.
43. 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** .....

**Alexander Ganotis**  
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