

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2012

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

Decision (including any steps ordered)

1. The complainant requested copies of the oral and written evidence presented to the Lord Justice Scott Baker Extradition Review.
2. The Commissioner's decision is that the public authority was entitled to withhold the information within the scope of the request on the basis of section 22(1) FOIA (information intended for future publication).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 8 February 2012, the complainant wrote to public authority and requested information in the following terms:
'...a copy of all the written and oral evidence received by the Extradition Review chaired by Lord Justice Scott Baker, as well as a full list of people the Review Panel met and the dates of those meetings.'
5. The public authority responded on 15 March 2012. It explained that it considered the information requested exempt on the basis of section 22(1) FOIA (information intended for future publication).
6. Following an internal review the public authority wrote to the complainant on 18 April 2012. It upheld the application of section 22(1).

Scope of the case

7. On 23 April 2012, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. He submitted that the timing of the publication was being driven by the expediency of the timing of the government's decision on how to respond, rather than a desire to ensure full transparency or public access. He further argued that if the requested information was not disclosed before the government's decision, the public will not be able to contribute to the ongoing debate regarding what action the government should take following the review's recommendations. This, he argued, is of greater public interest than avoiding disturbing the government's publication timetable.
9. During the course of the investigation, the public authority explained to both the Commissioner and the complainant that it considered all of the information held with the second part of the request for '*a full list of people the Review Panel met and the dates of those meetings*' was reasonably accessible to the complainant and should have therefore been exempt on the basis of section 21(1) FOIA (information accessible to applicant by other means). The public authority also identified some information to the Commissioner within the scope of the request it considered exempt on the basis of section 40(2) FOIA (third party personal data).
10. The complainant did not challenge the public authority's reliance on sections 21(1) and 40(2) on the grounds described above.
11. Consequently, the scope of the investigation was therefore restricted to the information within the scope of the first part of the request for '*a copy of all the written and oral evidence received by the Extradition Review chaired by Lord Justice Scott Baker..*' not exempt on the basis of section 40(2) (referred to hereinafter as the disputed information). As mentioned, the public authority identified the information it considered exempt under section 40(2).
12. The disputed information was withheld solely on the basis of section 22(1).

Reasons for decision

Section 22(1)

13. By virtue of section 22(1), information is exempt from disclosure at the time of a request if –

'(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)'.

14. According to the public authority, the report of Lord Justice Scott Baker's review of the United Kingdom's (UK) extradition arrangements was presented to the Home Secretary on 30 September 2011 and was subsequently made publicly available. It explained that the Home Secretary will respond to the review's recommendations in due course but it did not have a specific date when this will happen given the detailed, wide-ranging and important matters under consideration. It argued that although the report was submitted in September 2011, it did not consider that the time taken so far to consider its recommendations was excessive given the nature of the issues under review.
15. The public authority explained that there was always an intention, in line with customary practice, to publish the written and oral evidence received by the review panel. It explained that this intention was reiterated in the commitment it had given to the Chairman of the Home Affairs Select Committee in March 2012 to publish the written and oral evidence at the same time as the government's response to the extradition review. Therefore, although a definite publication date had not been fixed, there is a settled expectation that publication will happen.
16. In terms of whether it was reasonable in all the circumstances to withhold the information until the planned publication takes place, the public authority argued that the publication of the government's response to the review and its plans for the future is the suitable point at which to publish the evidence which has contributed to the government's conclusions. As well as being in line with the accepted practices in relation to government consultation exercises, it was also fair to all concerned. Publication at the time of the government's response will meet with the undertakings which had already been given and hence with the likely expectations of those with an interest in the consultation exercise and its outcome. Publication of the evidence in advance of the announcement of the government's response to the review would be likely to lead to discussion, in Parliament, the media and in informed circles, about the evidence and about extradition in general. However, the right time for such discussion, is when the

government responds to the review, otherwise, there is a risk that the government's deliberations could be rushed or knocked off course.

17. In view of the public authority's explanation, the Commissioner finds that, at the time of the request, the disputed information was held by the public authority with a view to its future publication.
18. The Commissioner next considered whether it was reasonable in all the circumstances to withhold the disputed information until the planned publication. The Commissioner accepts that there is no requirement for the public authority to have a definite publication date.¹ He is also mindful of the likely prejudicial effect disclosure could have on the government's consideration of the recommendations of the review panel. He accepts that public discussion of the evidence considered by the review panel before the government's response to the panel's recommendations could put pressure on the government and result in a less than robust consideration of the relevant issues.
19. The Commissioner is aware that the UK's extradition arrangements - especially with certain countries - have come under intense scrutiny following a number of high profile individual cases. He accepts that disclosing the disputed information at the time of the request would have likely led to increased media attention on the issue and the government would have come under pressure to respond before it had fully considered the recommendations in Lord Baker's report. Although in this case the complainant believes that the public interest is in favour of disclosure, the Commissioner also accepts that publication at the time of the government's response will meet the likely expectations of those with an interest in the consultation exercise and its outcome because it follows the custom and practice of previous consultations.
20. Consequently the Commissioner accepts that, in the circumstances of this case, by the time of the request, the amount of time taken by the government to consider the report's recommendations was not unreasonable. In view of the above, the Commissioner finds that the public authority was entitled to withhold the disputed information on the basis of section 22(1) FOIA.

Public Interest Test

21. Section 22(1) is subject to a public interest test. The Commissioner must therefore consider whether in all the circumstances of the case,

¹ Further commentary on this point can be found in the 'Other Matters' section of this Notice.

the public interest in maintaining the exemption outweighed the public interest in disclosure.

22. In favour of disclosure, the public authority recognised the strong public interest in the public having access to the evidence submitted to the extradition review panel so that they are able to evaluate arguments presented on whether changes to UK's extradition arrangements are necessary.
23. In favour of maintaining the exemption, the public authority reiterated that the disputed information will be published in the very near future, consequently, the complainant would not have to wait a significant amount of time before publication.
24. The public authority further argued that publication before the planned date would undermine its pre-planned publication procedure and ability to use staff resources in a planned way so that reasonable publication timetables are not undermined. This would strongly be against the public interest.
25. The Commissioner agrees that there is a strong public interest in evaluating the evidence and/or arguments submitted to the review panel. He accepts that the disputed information would enhance the quality of the ongoing debate in relation to changes to the UK's extradition arrangements.² However, he believes that Lord Baker's report, which was published in September 2011, also enhances the quality of the ongoing debate.
26. In the circumstances at the time of the request, the Commissioner considers that the decision to postpone the publication of the disputed information until the time of the government's response to the recommendations in the report was unlikely to seriously undermine the debate. Therefore the Commissioner is of the view that there was not a sufficiently strong public interest in disclosure at the time of the request. It is also worth pointing out that the complainant did not question the accuracy of Lord Baker's report.

² Due to the volume of the disputed information, the public authority did not provide all of it to the Commissioner and instead invited him to view all of the information in situ. The Commissioner chose to review samples of the disputed information provided by the public authority. His observation above that disclosure would enhance the quality of the debate regarding the UK's extradition arrangements is based on the samples he reviewed and also by virtue of the fact that the submissions formed part of the evidence considered by the extradition review panel.

27. The Commissioner accepts that there is a strong public interest in ensuring that the public authority is able to plan the publication of the disputed information in a managed and coherent way. He has given particular weight to the public interest in ensuring that the quality of the government's deliberations in relation to the review of the UK's extradition arrangements is not undermined by the disclosure. Furthermore, the Commissioner has not seen any evidence to persuade him that the timing of the publication is being driven by other factors such as expediency of the timing of the government's decision on how to respond.
28. In view of the above, the Commissioner finds that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the disputed information.

Other matters

29. The Commissioner notes that the public authority is not obliged to provide a definite publication date and that it has not committed itself to one. Nevertheless, the Commissioner does not expect that the disputed information will be withheld for longer than is necessary. The effect of section 22(1) is not to grant a public authority the right to withhold information indefinitely.
30. In this case, the Commissioner could only consider the application of section 22 to withhold the information in the circumstances as they existed at the time of the request (i.e. February – March 2012). However, he wishes to make clear that any future request for the same information will have to be considered on its merits taking into account the public interest factors relevant at the time of the future request.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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