

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 March 2013

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

#### Decision (including any steps ordered)

---

1. The complainant has requested information about obtaining a licence to grow cannabis.
2. The Information Commissioner's decision is that the Home Office incorrectly withheld information under section 43(2) of the Act, the exemption for prejudice to commercial interests. The Home Office also did not respond to the complainant within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information which has been withheld under section 43(2) of the Act.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

---

5. On 6 January 2012, the complainant wrote to the Home Office (HO) and requested information in the following terms:

*'1) I asked exactly what I would need to have in order to qualify ie do you have to have a particular skill or doctor on my staff, registered with a specific body, do you think we have a to be a company, etc. I need to know as I plan to research ADHD responsiveness to medicinal cannabis*

*in 32 year old males. A hypothetical breakdown of the last person or group to qualify would be fine.*

*2) I also asked in my original letter for the cost of the license fees, for an individual (and group).*

*3) I told you the definition of the clause allowing importation refers specifically to 'persons' not companies or hospitals, can you explain why you don't consider me as a person?*

*4) I understand that you believe the term 'special purposes' means only that "licences may be issued for the use of clinical trials". This is as you think that Home Office policy with regards to 'other special purposes' refers solely to clinical trials. I would like to know where this 'home office policy' is officially written and I would like a copy. I would like to know who created it, (dept or person) and who periodical (sic) reviews it and when it was last reviewed.*

*5) I feel that the term 'special purposes' in that act itself relates to situations such as this one, what are your thoughts and why? Can you clarify these with your superior.*

*6) Under the data protection act can you give me a list of cannabis importation licenses granted in the last 4 years.*

*7) As you say "The Home Office only grants licences for controlled drugs where there is a clearly defined commercial end use" do you claim that a medicine, produced for human use in Europe, prescribed for a condition the medicine treats, aiming to be taken by that patient, is not a 'clearly defined end use.'*

*8) Please explain the phrase "commercial end use" are you suggesting I can import it, repackage or change it in some way and re-sell it? Even if only back to Europe? Please give me a broad definition of 'commercial' (as it is used here) and a specific example of a commercial end use of a schedule 1 substance where importation has been allowed.*

*9) Can you explain how and why a huge number of cannabis seeds were allowed to be imported by gw pharmaceutical in 1998, and how I could qualify for the same permit, to import my own for growing purposes (I understand I would need a separate cultivation license, is that your dept too?)'.*

6. The HO responded on 13 February. It stated that two of the complainant's questions in his request of 6 January fell under FOIA and the rest of his questions would be answered separately.

7. With regard to point 4 of the request, the HO explained that section 7(4)(a) of the Misuse of Drugs Act 1971 (the 1971 Act) makes provision for the Secretary of State to issue licenses for the purpose of research and licences for 'other special purposes'. The HO explained that the 1971 Act does not provide a definition of 'special purpose'.
8. The HO went on to explain that licenses within the provisions of section 7(4)(a) of the 1971 Act for research purposes would also include such purposes as clinical trials. The issue of licences for other special purposes have both historically and currently, applied to industrial hemp cultivation. In relation to the complainant's request for HO policy about this, it was applying section 21, explaining that the information was already available and provided the complainant with a link.
9. The HO also confirmed that applications for such licenses in either industrial or research categories are considered on a case-by-case basis by both ministers and government officials when deciding whether to issue a licence for those activities.
10. With regard to point 6 of the request, the HO confirmed that it held the information and that it was able to disclose some. It provided a table showing the number of cannabis import licences issued over a four- year period from 2008-2011. The HO explained that it could not disclose the list of cannabis importation licences and cited sections 31(1)(a), 41 and 43 of the FOIA.
11. Following an internal review the HO wrote to the complainant on 15 August. It stated that in relation to question 6 it was withholding information under sections 31(1)(a) and 43(2).

## **Background**

12. The complainant has made several requests for information about obtaining a licence to grow cannabis for medicinal purposes. It is already in the public domain that GW Pharmaceuticals are licensed to import cannabis seeds.

## **Scope of the case**

13. The complainant contacted the Information Commissioner (the Commissioner) to complain about the HO's application of sections 41(1), 31(1)(a) and 43(2) and the time taken to carry out the internal review.
14. The Commissioner notes that in its internal review the HO dropped its reliance on section 41; therefore, the Commissioner will not consider it any further. The Commissioner also notes that during his investigation the HO disclosed a list of cannabis import licences for 2010-11 in response to question 6.

15. The only information withheld by the HO now is the names of importers and an exporter under section 43(2). Therefore the Commissioner will not go on consider the application of section 31(1)(1)(a). The Commissioner will consider the application of section 43(2) to the withheld information, and the length of time taken to carry out an internal review.

### **Reasons for decision**

---

16. Section 43(2) of FOIA provides an exemption from disclosure where disclosure of information would, or would be likely to, prejudice the commercial interests of any person including the public authority holding the information.

17. The term 'commercial interests' is not defined in the FOIA but the Commissioner's awareness guidance states:

*" ... a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.*

*The underlying motive for these transactions is likely to be profit, but this is not necessarily the case, for instance where a charge for goods or the provision of a service is made simply to cover costs".*

18. Consideration of this exemption is a two-stage process. First, in order for the exemption to be engaged it must be at least likely that prejudice would occur.
19. Secondly, the exemption is subject to the public interest test. The effect of this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.
20. The first issue for the Commissioner to consider is whether disclosure could result in the prejudice that section 43(2) is designed to protect against. If this is not the case, the exemption is not engaged and there is no requirement to consider the public interest.
21. The standard approach to the prejudice test involves the consideration of three questions:
  - (1) what are the applicable interests within the exemption?
  - (2) what is the nature of the prejudice being claimed and how will it arise; and
  - (3) what is the likelihood of the prejudice occurring?

*The applicable interests*

22. The HO argued that disclosure of the withheld information would be likely to prejudice the commercial interests of the companies involved. This argument clearly relates to the interests covered by section 43(2) of the Act.
23. The information in question is the names of importers and in one case an exporter, which are private companies.

*The nature of the prejudice being claimed and how it will arise*

24. The HO explained that it was reasonable to assume that the requester might be requesting the information as or for a competitor. It argued that disclosure would provide insight into the status of licences held and would prejudice the companies' commercial interests and their competitors would have an unfair commercial advantage.

*The likelihood of the prejudice occurring*

25. For section 43(2) to apply there must be prejudice which must not be trivial or remote, but real, actual and of substance to the commercial interests of a relevant body.
26. The Commissioner notes that the only arguments provided by the HO are set out in paragraph 24 and he does not consider that these arguments support its application of section 43(2). On the basis of the arguments provided by the HO, the Commissioner is not convinced that any actual prospect of prejudice to commercial interests associated with the disclosure of this information has been demonstrated. Therefore he concludes that the exemption is not engaged.

**Procedural matters**

27. The Commissioner finds that the HO did not provide its refusal notice within the twenty working day limit in the Act.

**Other matters**

---

28. The Commissioner notes that in its initial response to the complainant the HO stated that it was withholding information under section 43(2). In favour of withholding the information, the HO argued that without knowing why the complainant wanted the information, it could be assumed that he was requesting the information as, or for, a competitor.

29. In most scenarios the FOIA is both applicant and purpose blind therefore, whom a requester is and what he wants the information for cannot be taken into account by a public authority.
30. The complainant also complained about the fact that the HO did not carry out an internal review initially.
31. 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.
32. 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 FOIA, 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.
33. The Commissioner notes that there was some confusion about whether the complainant had requested an internal review. However, he considers that if a complainant complains about a response he has received, a public authority should carry out an internal review even if the complainant does not specify that he is asking for a review.

## Right of appeal

---

34. 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)

35. 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.
36. 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 .....**

**Lisa Adshead**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**