

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2013

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

Decision (including any steps ordered)

1. The complainant requested information relating to immigration at Glasgow International Airport. The Home Office provided some information within scope of the request but refused to provide the remainder, citing section 31(1)(e) of FOIA (law enforcement).
2. The Commissioner's decision is that the Home Office was correct to rely on section 31(1)(e) to withhold the information. He requires no steps to be taken.

Request and response

3. The complainant wrote to the Home Office on 11 July 2012 and requested information in the following terms:

"For the month of June 2012 can you please provide the following:

(a) All recorded information held by the Home Office relating to the time taken for passengers to clear immigration at Glasgow International Airport.

(b) The total number of foreign nationals refused entry to the UK upon arrival at Glasgow International Airport."
4. The request was the subject of an earlier investigation by the Commissioner (FS50474312). The Commissioner issued a decision notice in that case requiring the Home Office to issue a notice compliant with section 17(3) setting out its conclusion about where the balance of the public interest lies.

5. Following the Commissioner's intervention, the Home Office provided the complainant with its substantive response on 13 December 2012. It provided information within the scope of part (a) of the request but refused to provide the information within scope of part (b). It cited the section 31 exemption (law enforcement) as its basis for doing so.
6. On 21 December 2012 the complainant requested an internal review into the decision to withhold the information requested in part (b). The Home Office sent him the outcome of its internal review on 17 January 2013. It upheld its original position – applying section 31(1)(e) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 17 January 2013 to complain about the way his request for information had been handled. He told the Commissioner:

"I would contend that the Home Office has not demonstrated sufficiently that the exemption applies in the first instance. While the information is clearly related to immigration controls, that is insufficient to engage the exemption".

8. On the basis that the exemption is engaged, the complainant said that he disagrees that the balance of the public interest is in favour of withholding the requested information.
9. The Commissioner considers the scope of his investigation to be the Home Office's application of section 31 of FOIA.

Reasons for decision

Section 31 law enforcement

10. Section 31 of FOIA provides an exemption where disclosure of information would, or would be likely to, prejudice various functions relating to law enforcement.
11. 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 to the process specified in the relevant subsection - in this case paragraph (e) relating to the operation of the immigration controls.
12. 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.

The applicable interests

13. In this case, the Commissioner understands that the applicable interests are with respect to the operation of the immigration and/or customs controls.

The nature of the prejudice

14. The complainant told the Commissioner:

"It is necessary for a public authority relying on any arm of section 31 to demonstrate that the prejudice is more than a remote possibility. The initial substantive response and the response to the internal review suggest nothing other than a hypothetical possibility of the information in question being used by potential immigration offenders to identify ports through which they are more likely to gain entry".

15. In this respect, the Commissioner considers that, rather than make any attempt to explain its reasons for applying the exemption, the Home Office appears to have relied on the requested information being self-evidently exempt. However, he accepts that some of the Home Office's arguments in relation to the public interest test - an issue which falls to be considered when, or after, the decision has been taken that the exemption is engaged - could be considered relevant to the nature of the prejudice.

16. The Home Office describes the requested information in this case as being *"location specific and therefore operationally sensitive"*. With respect to its reasoning that disclosure would lead to the prejudice set out in the exemption, the Home Office told the complainant in its internal review correspondence that:

"releasing port specific entry refusal data may enable those with criminal intent to circumvent border controls by building up a picture of refusal rates at different ports".

17. In this respect, the Home Office provided the Commissioner with further information about its application of the exemption during the course of his investigation.

18. The complainant told the Home Office:

"Simply knowing the number of foreign nationals who were refused entry to the United Kingdom at Glasgow Airport is unlikely to reveal the workings of immigration controls at Glasgow International Airport.... Furthermore, the number of persons refused without any other information to place it in context cannot reasonably be

considered to reveal anything about the way in which immigration controls work at a specific port”.

The likelihood of the prejudice occurring

19. In correspondence with the Commissioner, the Home Office confirmed that it considers that prejudice would be likely to result if the information at issue were to be disclosed.

Is the exemption engaged?

20. The complainant told the Commissioner:

“The Home Office has not demonstrated how a simple figure of the number of persons refused entry at a particular port can be exploited by criminal gangs”.

21. The Commissioner is mindful that a request for a single number - as in this case - might not provide sufficient data on which to determine refusal rates. He therefore accepts that disclosure of a single number may not appear harmful. However, he must consider the request in context.
22. He recognises that the information at issue in this case - location-specific refusal information - together with the responses to other, similar, requests could feasibly be used by immigration offenders to compile information about the UK’s immigration controls in various time periods and locations. He therefore finds it plausible that the release of the information at issue in this case - the number of foreign nationals refused entry at Glasgow International Airport - could be used by interested parties to exploit Border Force’s law enforcement capabilities. He therefore finds the exemption engaged.

The public interest

23. Since section 31 is a qualified exemption it is subject to a public interest test under section 2(2)(b) of the Act. This favours disclosure unless, *“in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information”.*

Public interest arguments in favour of disclosing the requested information

24. The complainant disputes that releasing the information at issue could permit offenders to gain an insight into the workings of immigration controls at Glasgow Airport. In support of his argument, he referred to crime statistics which he said are regularly released by *“police forces up and down the United Kingdom”.* He maintained that the release of such

information, which shows detection rates in specific localities, "doesn't appear to impede their ability to detect offenders".

25. The Home Office acknowledges the public interest in the disclosure of the requested information:

"as it will allow the public to have knowledge of the number of foreign nationals who were refused entry to the UK and increasing the transparency of the work of BF [Border Force]".

26. It also recognised that disclosure would reassure the public that there were effective measures in place at the border to maintain the integrity of the UK's immigration controls.

Public interest arguments in favour of maintaining the exemption

27. The Home Office maintains that it is in the public interest that the UK Border Agency is able to maintain the integrity of the UK's immigration and /or customs controls. In this respect, the Home Office told the complainant that disclosure of the information at issue in this case "could potentially assist those engaged in criminal activities at the borders".

28. It further explained that:

"Access to such information could be used to identify and assess the strengths and weaknesses of our border controls, with the potential to cause harm to the integrity of the UK's borders. In addition the processes through which UKBA works with other parts of the Home Office and with other organisations to ensure the integrity of our immigration and /or customs controls could also be undermined".

29. Responding to the complainant's view that "the risk is rather overstated" if it were to release the entry refusal figures for June 2012, the Home Office told the complainant:

"It should be noted that similar Freedom of Information requests for different months of the same year or previous years, for the same location or different locations, will give those with criminal intent a bigger picture of the workings of the immigration controls in the various time periods and locations in the UK".

Balance of the public interest arguments

30. In reaching his decision in this case, the Commissioner is mindful of the fact that matters of immigration and border control are issues of concern and interest to the public. He therefore gives some weight to

the argument that disclosure in this case would further the understanding of, and participation in, public debate of issues of the day.

31. However, he also recognises the strong public interest in preventing individuals intending to circumvent immigration controls from having access to information which could assist them in building a pattern of refusal rates at different borders.
32. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of disclosure do not equal or outweigh those in favour of maintaining the exemption.

Right of appeal

33. 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

34. 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.
35. 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

Jon Manners
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