

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2013

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information about the local security strategy and local searching policy for Wakefield prison. The Ministry of Justice (MoJ) refused to disclose the requested information citing section 31(1)(f) of FOIA (prejudice to maintenance of security and good order in prisons). During the course of the Commissioner's investigation it also cited section 38 (health and safety).
2. The Commissioner's decision is that the MoJ did not deal with the request in accordance with the FOIA in that it did not clearly explain how the exemptions apply. The MoJ should issue a fresh response under the FOIA. That response should include providing the complainant with the information that the MoJ indicated, during the Commissioner's investigation, could be disclosed. 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 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

3. The complainant wrote to the MoJ on 16 August 2012 and requested information in the following terms:

"I would like to make a request for the most recent HMP Wakefield's local security strategy and the local searching policy with all amendments and appendices."

4. The MoJ responded on 13 September 2012 and confirmed that HMP Wakefield¹ does have a Local Security Strategy document. However, it refused to provide that information citing section 31(1)(f) of FOIA (prejudice to maintenance of security and good order in prisons).
5. When he wrote to the MoJ on 17 September 2012 to request an internal review, the complainant said:

"Considering that both the security strategy and the searching policy are official documents that describe local policies and standardsthey should be disclosed..... If full disclosure isn't appropriate then the extracts should be made available with only the particularly sensitive information withheld rather than the entire policies withheld ... Moreover, considering that the National Security Framework is accessible therefore the local policies should be as well".

6. The MoJ provided an internal review on 26 October 2012 in which it maintained its original position. The MoJ did, however, provide, on a discretionary basis, copies of information it considered relevant – namely Prison Service Instructions (PSI) 67/2011 and PSI 68/2011. Those instructions relate to 'Searching of the Person' and 'Cell, Area and Vehicle Searching' respectively.
7. It also provided, on a discretionary basis, a copy of a redacted version of the prison's Local Searching Strategy which sets out the searching procedures for prisoners and domestic visitors.
8. The MoJ told the complainant:

"All three documents are in the public domain".

¹According to gov.uk:

"HMP Wakefield is a high-security prison for men typically in security categories A and B".

Background

The Local Security Strategy (LSS)

9. During the course of his investigation, the MoJ told the Commissioner:

"Every prison is required to have in place a Local Security Strategy (LSS) The LSS derives from the NSF [National Security Framework] and sets out in detail how national policies and procedures are applied locally....."

Although elements of a prison's LSS will necessarily replicate policy set out in the NSF much of the LSS is concerned with detailed local security procedures".

10. The MoJ also said:

"There is no requirement for a prison to have in place a redacted version of their LSS which can be made public".

11. Describing the LSS in response to the Commissioner's request for clarification as to which parts of the local security strategy replicate national policy, the MoJ told the Commissioner:

"there are 400 files (each being 1 to 30 pages in length)".

Local Searching Policy (LSP)

12. The MoJ told the Commissioner:

"PSI 67/2011 "Searching of the Person" requires all prisons to have a Local Searching Strategy in place.... This forms part of a prison's wider Local Security Strategy".

13. The Commissioner recognises that some of the terms used to describe the disputed information appear to be used interchangeably.

14. The Commissioner sought clarification of the terminology used. To that end, the MoJ told the Commissioner:

"I have received confirmation that the Searching Strategy and Searching Policy are the same. All aspects of searching are detailed within the searching strategy document".

15. The MoJ provided the Commissioner with examples of how local searching procedures are made public and brought to people's attention. However, it confirmed that the Search Strategy Document is not

published and made known to the public – and explained that it is retained within the Local Security Strategy (LSS).

Scope of the case

16. The complainant contacted the Commissioner on 7 November 2012 to complain about the way his request for information had been handled.
17. The Commissioner understands that, prior to making the request for information under consideration in this case, the complainant had corresponded with the MoJ about the topic which is the subject of this request. Notwithstanding any other correspondence, the Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000.
18. In bringing his complaint to the Commissioner's attention, the complainant explained the background to this request. He confirmed:

"I've requested LSS and LSP with all amendments and appendices from the prison service HQ/MoJ....I understand that LSS [Local Security Strategy] and LSP [Local Searching Policy] may contain information about security procedures designed to maintain control, prevent escape, prevent contraband of prohibited articles and prevent crimes. However these are not the information I require. I have specified in earlier correspondence what I require and I believe it is contained within the requested documents. The prison should only withhold those parts that are deemed not suitable for disclosure and every piece withheld should be justified and reasons given".
19. The Commissioner contacted the complainant in order to clarify some aspects of the scope of his request. The complainant confirmed:

"I would like to get access to all relevant sections of LSS and LSP from HMP Wakefield and I believe that only the information which qualify under exemptions should be withheld".
20. During the course of the Commissioner's investigation, the MoJ told the Commissioner that it wished to apply section 38(1)(a) (health and safety) simultaneously to the withheld material.
21. The Commissioner has investigated the MoJ's application of section 31 and 38 of FOIA to the withheld information.

Reasons for decision

22. The Commissioner understands from the MoJ that the withheld information in this case comprises around 400 separate files.
23. The Commissioner has had the opportunity to view the index to the '*List of Local Instructions*' together with examples of a number of specific instructions.

Section 31 law enforcement

24. Section 31 of FOIA provides a prejudice based exemption which protects a variety of law enforcement interests. Section 31 is also subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but, before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.
25. In this case, the MoJ is citing section 31(1)(f) which provides an exemption for information the disclosure of which would be likely to prejudice the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.
26. The MoJ told the complainant:

"Prison's Local Security Strategies and Local Searching Policies contain detailed information about security procedures designed to maintain safe and effective control; prevent escape; prevent access to and enable detection of prohibited articles (including drugs, mobile phones, weapons) and the ability of prisoners to commission or carry out crime".
27. During the course of his investigation, the MoJ told the Commissioner:

"the MoJ is prepared to disclose those parts of Wakefield prison's LSS which largely replicate national policy, or which relate to the setting of high level requirements".
28. The Commissioner asked the MoJ to clarify its position. In response, the MoJ told the Commissioner:

"In respect of your question about which parts of the LSS replicate national policy: it's difficult to answer this as there are 400 files (each being 1 to 30 pages in length) in question and each would need to be checked to assess this".

29. Following further correspondence, the MoJ confirmed that some of the information within the scope of the request and withheld by virtue of section 31(1)(f), can be disclosed. It told the Commissioner:

"... instructions 3.31, 4.54 and 4.58 can be disclosed in full as these are in line with PSI's [prison service instructions] on searching and correspondence which are in the public domain".

30. Although it also told him that parts of two other instructions within scope can be disclosed, the information was not provided to the complainant.

Is the exemption engaged

31. The main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to. This is sometimes described as a presumption or assumption in favour of disclosure.
32. In the Commissioner's view, this means that everybody has a right to access official information. Disclosure of information should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by the FOIA.
33. The Commissioner recognises that exemptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person or it would be against the public interest.
34. However, when refusing a request on the basis that an exemption applies, the public authority should, in most instances, explain the reasons for its decision. When investigating a complaint, the Commissioner will consider how well the public authority has explained the application of the exemption.
35. In this case it is clear from the MoJ's correspondence with the Commissioner that some of the withheld information is not exempt from disclosure. It appears that, rather than withhold only those parts of the information within the scope of the request to which the exemption may apply, the MoJ applied the section 31 exemption in a blanket fashion.
36. The Commissioner is concerned that, from its submissions, the MoJ appears to be applying the exemption without being able to explain clearly why it applies. In light of this, the Commissioner's decision is that the MoJ should reconsider the request and provide a fresh response to the complainant under the FOIA.

Section 38 health and safety

The MoJ is citing section 38 in respect of the same information it considers engages section 31. As with section 31, the Commissioner does not consider that the MoJ has provided sufficient reasons for applying section 38 in this case. Again, the Commissioner's decision is that the MoJ should reconsider the request and provide a fresh response to the complainant under the FOIA.

Right of appeal

37. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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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Wycliffe House
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SK9 5AF