

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2014

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested an un-redacted copy of the Minimising and Managing Physical Restraint training manual published by the Ministry of Justice (MOJ) in 2012. The MOJ refused to provide the requested information by relying on the exemptions at sections 31(1)(f), and 38 (1)(a) and (b) of FOIA.
2. The Commissioner's decision is that Ministry of Justice was entitled to rely on section 31(1)(f), and that the public interest favours withholding the redacted information.
3. The Commissioner does not require the public authority to take any steps.

Background

4. The Commissioner has previously adjudicated on matters concerning information relating to restraint techniques. Both parties have made reference to them and therefore the Commissioner provides a summary of those adjudications.
 5. In FS50173181¹, the complainant requested from the Youth Justice Board for England and Wales (YJB) a copy of the manual detailing the
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¹ http://www.ico.org.uk/upload/documents/decisionnotices/2009/fs_50173181.pdf

physical restraint methods that may be used on young people held in the custody of Secure Training Centres. The YJB refused to disclose this information, citing the exemption provided by section 31(1)(f) (prejudice to the maintenance of security and good order in prisons). The YJB also later cited the exemption provided by section 38(1)(a) and (b) (endangerment to health and safety). The Commissioner concluded that both of these exemptions were engaged, but that the public interest in the maintenance of these exemptions does not outweigh the public interest in disclosure. He therefore ordered the release of the withheld information. The YJB did not appeal this decision.

6. In FS50371302², the complainant requested from the MOJ a copy of the 'Use of Force' training manual along with related information concerning where the techniques were permitted to be used and by whom. The Commissioner's decision was that the MOJ had withheld some of the requested information correctly and some of it incorrectly. Neither party appealed this decision.
7. The Commissioner is not bound by his previous decisions.

Request and response

8. On 12 July 2012 the complainant requested, from the MOJ, information of the following description:
 - An un-redacted copy of the Minimising and Managing Physical Restraint ("MMPR") training manual published by the Ministry of Justice in 2012.
9. On 6 August 2012 the MOJ responded. It provided a link to the redacted version of the MMPR manual but refused to provide an un-redacted version. It cited the following exemptions as its basis for doing so:
 - Section 31 (1)(f) – Law Enforcement
 - Section 38 (1)(a) – Health and Safety
 - Section 38 (1)(b) - Health and Safety

² http://www.ico.org.uk/~/media/documents/decisionnotices/2012/fs_50371302.pdf

10. The complainant requested an internal review on 7 February 2013. The MOJ sent her the outcome of its internal review on 1 March 2013. It upheld its original position.

Scope of the case

11. The complainant contacted the Commissioner 7 March 2013 to complain about the way her request for information had been handled.
12. As part of his investigation the Commissioner has viewed a copy of the withheld information and considered arguments from both parties.
13. The withheld information comprises various parts of a training manual that aims to provide staff with physical skills/ techniques that can be applied to a young person whose behaviour requires the application of such techniques to prevent injury or serious damage to the young person, others or property.

Reasons for decision

14. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.
15. The MOJ has informed the complainant that it holds the requested information. However it relies on sections 31(1)(f), and 38 (1)(a) and (b) to withhold the redacted information.

Sections 31(1)(f)

16. Section 31(1)(f) provides that information is exempt if its disclosure would, or would be likely to, prejudice the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained. This exemption is qualified by the public interest, meaning that the information should still be disclosed if the public interest does not favour maintenance of the exemption despite the prejudice that this would, or would be likely to, cause.
17. The MOJ believes that releasing the information would be likely to prejudice the maintenance of security and good order in prisons or in

other institutions where persons are lawfully detained, and that it would be likely to endanger the physical or mental health of individuals.

18. It maintains that the safety and wellbeing of all who live and work in a Young Offender Institutions ("YOIs") is dependent on the ability of staff to manage violent and disruptive young people in a controlled and ordered environment. YOIs hold a diverse range of young people including those who are violent and disruptive, and many who for a variety of reasons are vulnerable. It explained that if the ability of staff to control the violent and disruptive element is compromised, the YOI environment is likely to become unstable, intimidating and dangerous.
19. The MOJ argues that it has a duty of care to prison staff and prisoners and to release the withheld information would put this at risk. It asserted that the public expect security and good order to be maintained effectively in prisons and this could not be done if the 'MMPR' manual was freely available in the public domain.
20. The MOJ maintained that the threat of a loss of order in prisons due to the disclosure of the withheld information would increase due to the frequency with which control and restraint methods had to be used within prison establishments and the fact that some of these methods had been overcome due to prisoners already copying techniques learned from experience.
21. The complainant disputes the above assertions of the MOJ. The complainant particularly asks that the ICO's decision in 2009 (FS50173181) be taken into account. That case also concerned the release of a restraint training manual used in child custody, and the ICO judged full disclosure to be in the public interest. The MOJ did not appeal the decision.
22. The complainant goes on to maintain that on the matter of young people developing countermeasures, the MOJ will be aware that the Physical Control in Care (PPC) manual has been in the public domain post the Commissioner's decision, and there has been no evidence of those in secure training centres developing countermeasures which was one of the principal arguments for non-disclosure made by the MOJ.
23. The MOJ has commented on the remarks made by the complainant regarding the Commissioner's decision which dealt with a request for release of the PCC manual in 2009. The MOJ explained that there are fundamental differences between the PCC and MMPR training manual. It said as follows:
 - PCC was developed by the Prison Service between 1994 and 1998 for use in the then newly commissioned privately run Secure

Training Centres (STCs). It is a system of restraint that is primarily a non-pain compliant set of physical holds which rely on staff skill and strength.

- The PCC curriculum was originally designed for use with young people in a secure environment with an age range of 12-14 year olds. Due to the change in demographics within the STC estate which now includes an age group up to 17 year olds, PCC as a restraint system was unable to manage this new population. As a consequence and in light of the recommendations made within the Independent Review of Restraint carried out by Andrew Williamson and Peter Smallridge³, the previous Government commissioned NOMS National Tactical Response Group to develop a new restraint system which would holistically look at the wider secure young people's estate. This system came to be known as MMPR.
 - The MMPR syllabus was designed specifically for young people and incorporates risk assessed physical restraint techniques within an overarching behaviour management and ethical approach. Its primary use will be within under 18 Young Offender Institutions (YOIs) and STCs, although it is envisaged that it could be used more widely across the young people's secure estate.
24. The MOJ further maintains that MMPR is however very different from the distraction techniques referred to above, and is not designed solely for use in STCs. It will also be used in YOIs, and there are significant differences between YOIs and STCs and the young people detained within them. YOIs accommodate an older group of young people, many of whom demonstrate a much higher level of dangerous and violent behaviour towards both other young people and staff alike. The MOJ explained that staff must be able to respond to these situations in a way that supports the maintenance of the health and safety of both the young person and others. Furthermore, there are similarities between the application of some of the techniques included in MMPR and those included in the 'Use of Force' manual, the restraint system used in adult prisons. It therefore believes that the likelihood of prejudice to the maintenance of security and good order in prisons and the health and safety of both young people and staff resulting from disclosure of the withheld information in the MMPR manual would be real and significant.

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<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/Review%20of%20restraint.pdf>

25. The complainant asserts that the MOJ has not provided evidence to support its argument and the Commissioner acknowledges no concrete evidence has been provided. However this is not necessarily fatal to the MOJ case as the exemptions are predicated on what is likely to happen rather than what has happened.
26. The Commissioner has to determine whether the exemption is engaged as asserted by the MOJ, that is to say, that the likelihood of prejudice to the maintenance of security and good order in prisons resulting from disclosure of the withheld information would be real and significant rather than a remote possibility.
27. Having noted the arguments, reviewed and carefully considered the nature and detail of the withheld information in this case, the Commissioner recognises there is a logical connection between disclosure of the redacted information and the prejudice asserted and therefore accepts that there is a causal link. The Commissioner also notes there are significant similarities between the withheld information in this case and that which he accepted could properly be withheld in decision notice FS50371302, the 'Use of Force' manual case.
28. As to the likelihood of this possibility actually occurring, the Commissioner notes that there were 1,339 incidents involving the use of physical restraint in under 18 YOIs, between April 2012 and March 2013, and approximately 20,000 across the prison estate in 2013. This indicates that physical restraint is used relatively regularly. This in turn suggests that any prejudice likely to result through the inability to use physical restraint effectively would also occur relatively frequently. Due to similarities between the application of some of the techniques in both the MMPR and 'Use of Force' manuals the Commissioner accepts that disclosure of the withheld information could impact on security across both YOIs and the adult prison estate.
29. The Commissioner recognises and accepts that there would be a likely causal link between disclosure of the withheld information and the prejudice foreseen by the MOJ and considers this sufficient to meet the prejudice test in this case. The Commissioner therefore finds the exemption provided by section 31(1)(f) engaged.

The public interest test

30. Section 31 (1)(f) is a qualified exemption so the public interest test set out in section 2(2)(b) must be applied. That is, though the exemption is engaged, the information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

31. The Commissioner notes that the only valid public interest arguments in favour of maintaining an exemption are those that relate specifically to that exemption, (Christopher Martin Hogan and Oxford City Council v Information Commissioner EA/2005/0026 and 0030 ("Hogan"), paragraph 59).
32. Conversely, the Commissioner notes, the above restriction when applying the public interest test does not apply to those factors favouring the release of information. The Information Tribunal in Hogan made this point at paragraph 60 where it said:

"While the public interest considerations against disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad-ranging and operate at different levels of abstraction from the subject matter of the exemption."

Public interest arguments in favour of disclosing the requested information

33. The Commissioner appreciates that there is a very significant general public interest in promoting transparency, accountability and public understanding. The FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.
34. It is important that the public feel confident that the health and safety of young people and staff is considered in the development and deployment of MMR. The Commissioner recognises that release of the withheld information has the potential to provide greater accountability in relation to the use of physical restraint in YOIs.
35. In particular the Commissioner acknowledges the public interest in disclosure of the withheld information about the use of control and restraint techniques in order to inform debate about concerns around this issue.

Public interest arguments in favour of maintaining the exemption

36. In favour of maintaining the exemption, the MOJ stated that it would not be in the public interest to disclose information which might lead to security issues for the operation of the YOIs. It told the complainant:

"They are required to manage threats to security and order which impact directly on the safety and well-being of individuals and to the establishment as a whole. Quickly gaining control of a young person threatening or causing a violent attack is key to protecting the safety of persons within an establishment and maintaining a controlled and ordered environment".

37. MOJ also stated that if the information was disclosed it considered it likely that some young people would develop countermeasures to the techniques. It told the complainant:

"With specific knowledge of the techniques, some young people could also make the application of the approved techniques so difficult that staff would either be forced to improvise methods of bringing a violent young person under control, which could increase the risk to both young person and staff, or utilise more staff to manage the situation".

Balance of the public interest

38. The Commissioner having carefully considered and weighed the public interest arguments both for and against disclosure concludes that the public interest in maintenance of the exemption outweighs the public interest in disclosure. The Commissioner's conclusion is based on the need to ensure security and good order in YOIs and the benefit to the health and safety of both prison officers and prisoners in YOIs that may result through withholding the information from the public domain and conversely, the harm that may result to both through disclosure of the information. The Commissioner also considers that due to the similarity of some of the techniques disclosure could also have an adverse impact on the wider prison estate which adds some further weight to the public interest in withholding the information. The Commissioner recognises the public interest in overall transparency and the value to public debate the information if disclosed would add, however, he does not consider this factor to carry sufficient weight to tip the balance of the public interest in favour of disclosure. The Commissioner also notes that although his conclusion is based on the particular circumstances of this case it does accord with his conclusions in relation to similar information in a previous decision notice FS50371302.
39. Having found that section 31(1)(f) is engaged and that the public interest favoured the maintenance of that exemption the Commissioner did not go on to consider the applicability of section 38 (1)(a) and (b).

Right of appeal

40. 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

41. 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.
42. 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

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