

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 August 2015

**Public Authority:** Serious Fraud Office  
**Address:** 2-4 Cockspur Street  
London  
SW1Y 5BS

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the number of businesses self-reporting instances of fraud or corruption within the UK and overseas from 2012-14. The Serious Fraud Office withheld the information under section 31(1)(a) (prejudice to the prevention or detection of crime).
2. The Commissioner's decision is that the Serious Fraud Office has applied section 31(1)(a) appropriately.
3. The Commissioner does not require the public authority to take any steps as a result of this decision.

#### Request and response

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4. On 6 June 2014, the complainant wrote to Serious Fraud Office (the SFO) and requested information in the following terms:

*"How many businesses self-reported instances of fraud or corruption found within that company's activities within the UK to the SFO from 2013/14, broken down by year?"*

*How many businesses self-reported instances of fraud or corruption found within the business's overseas activities to the SFO from 2012/13 to 2013/14, broken down by year? If data is not yet available for 2013-14, please provide the data for 2012/13."*

5. On 4 July 2014 the SFO responded. It refused to provide the requested information, citing the following exemptions as its basis for doing so:  
  
section 30(1) – investigations  
section 43(2) – commercial interests.
6. The complainant responded on 8 August 2014, explaining that she was asking for aggregated information and therefore disclosure would not prejudice the commercial interests of anybody. She also pointed out that the SFO had disclosed similar information previously and provided a copy of a response provided by the SFO previously to a different requester. The complainant also asked whether any prejudice was suffered in response to a previous disclosure of similar information.
7. The SFO responded on 21 August 2014, explaining that it could review its response or consider the complainant's response as a new request for an update of the information provided in response to the earlier request in 2012 instead. The complainant responded, confirming that updated information would be sufficient.
8. On 18 September 2014 the SFO responded. It explained that the update of the information provided in response to the request of 2012, was also exempt under sections 30(1) and 43(2). The SFO explained that it publicises information about its investigations where possible without prejudice to them.
9. The SFO also explained that given the small number and seriousness of cases it investigated, it considered that it was not possible to provide further information publicly about the types of self-reports being made. This was because in the past there had been significant speculation about cases it had taken on and often attempts were made to inform this speculation by referring to statistics given in speeches or answers to information requests.
10. In addition, the SFO explained that this speculation was not helpful and could generate publicity that was misleading and/or potentially disruptive to investigations.
11. In its internal review of 28 November 2014 the SFO upheld its application of section 43(2), but did not uphold the application of section 30(1). It applied section 30(2)(b) (confidential sources) instead.

## Scope of the case

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12. The complainant contacted the Commissioner on 6 January 2015 to complain about the way his request for information had been handled.
13. During the Commissioner's investigation, the SFO confirmed that it was no longer relying on sections 30(2)(b) and 43 but was relying on section 31(1)(a) (prevention or detection of crime).

## Reasons for decision

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### Section 31 – law enforcement

14. Section 31(1)(a) of FOIA states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under the Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime".

15. Section 31 is a prejudice-based exemption. In order to be engaged, the following criteria must be met:

- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

16. The relevant applicable interests cited in this exemption are the prevention or detection of crime. The Commissioner accepts that the arguments made by the SFO set out below address the prejudice at section 31(1)(a) in relation to the detection of crime.

17. When considering the second point, the Commissioner must be satisfied that the nature of the prejudice is "*real, actual or of substance*" and not trivial or insignificant. He must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
18. The SFO explained that there was a direct causal link regarding the disclosure of the numbers and the discouragement of corporate self-reports which it uses to detect crime and trigger investigations. It also explained that the lower the number, the less likely lawyers were to advise their clients to take the perceived risk of reporting an offence, which might not otherwise be detected.
19. The SFO argued that the prejudice would be real and very substantial. It explained that a significant proportion of its investigations arise out of corporate self-reports and that the new statutory Deferred Prosecution Agreement (DPA) scheme which came into force on 24 February 2014, depends on a continuing stream of corporate self-reports. The SFO explained that the DPA scheme meant that it became legally possible for it to enter into DPAs with corporate bodies suspected of criminality. If a corporate body self-reports criminality and co-operates fully with the SFO investigation, the SFO can invite it to enter into a DPA. If the court consents, proceedings are suspended until such time as the conditions of the DPA are met or breached by the corporate body.
20. The SFO also argued that anything that acts as a discouragement to those considering providing it with information, will inevitably substantially hamper its ability to detect and investigate serious crime. It explained that there had been media interest and speculation about the use of DPAs. It provided the Commissioner with specific recent examples of media approaches and speculation in response to which it had declined to comment. The SFO explained that DPA negotiations were treated as strictly confidential between the parties.
21. With regard to the third point, the SFO explained that disclosure of the requested information would be likely to prejudice the detection of crime. It explained that it partially, but not exclusively, depends on self-reports to maintain its capability to detect and investigate serious and complex fraud, including bribery and corruption.
22. The SFO also explained that in 2012 the definition 'self-report' was narrowed. It went on to argue that disclosure of the requested information would discourage corporates from self-reporting internal wrong-doing, noting that relatively few others appear to be prepared to accept the risk involved.

23. Taking everything into account, the Commissioner is satisfied that the disclosure of the requested figures would be likely to prejudice the detection of crime. Having accepted that the exemption is engaged, he will go on to consider the public interest arguments.

**Public interests arguments in favour of maintaining the exemption**

24. The SFO argued that the public interest in maintaining section 31(1)(a) outweighed the public interest in disclosure. It explained that it considered that the inevitable consequence of disclosure of the requested figures would be to undermine its work. The SFO explained that it had a statutory duty under section 1 of the Criminal Justice Act 1987<sup>1</sup> to investigate serious or complex fraud.
25. The SFO explained that it needed to maintain the voluntary supply of information from sources that were not necessarily considered as confidential.
26. Furthermore, the SFO explained that the voluntary provision of this type of information enabled it to detect crime and also significantly reduced the amount of time and public expenditure it takes to investigate each case.

**Public interest arguments in favour of disclosing the requested information**

27. The SFO acknowledged the public interest in transparency with regard to understanding how law enforcement agencies work, in order to hold them to account.
28. The complainant argued that the requested information should be disclosed as it was for aggregated information only. She also argued that there was a clear public interest in confirming that the SFO is effectively engaging with the corporate sector and encouraging an environment of good compliance and controls.
29. The complainant also explained that the SFO had disclosed similar information to the requested information in this case, in the past.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1987/38/contents>

## **Balance of the public interest arguments**

30. The Commissioner has considered the public interest arguments from both parties, including the public interest in transparency.
31. The Commissioner notes that in its refusal notice of 18 September 2014, the SFO confirmed to the complainant that it investigates a small number of cases and it considered that it was not possible to provide further information publicly regarding self-reported breaches. Although this was in connection with the original application of sections 30(1)(a) and 43, the Commissioner considers that it is relevant to the application of section 31(1)(a).
32. The Commissioner also notes that the complainant provided information in relation to a previous, similar request. In that case, the SFO provided overall figures of self-reports relating to company activities in the UK and abroad for each year from 2008-2013. The Commissioner notes that the SFO explained that it was not possible to provide a breakdown by UK/overseas activities.
33. The Commissioner considers that even though the SFO has provided similar information in the past, this does not set a precedent. He notes that since then the definition of self-report has been narrowed and, subsequently, the DPA scheme was set up in order to work with companies who self-report criminality. The Commissioner also notes the SFO's explanation of how the DPA scheme is reliant on companies coming forward to self-report.
34. The Commissioner considers that appropriate weight must be given to the public interest inherent in the exemption; that is, the public interest in avoiding likely prejudice to the prevention or detection of crime by the SFO. The Commissioner considers that it is clear that there is a very substantial public interest in avoiding that prejudice and that this is a strong public interest factor in favour of maintenance of the exemption.
35. The Commissioner has weighed the public interest in avoiding prejudice to the prevention or detection of crime against the public interest in the openness and transparency of the SFO and the complainant's arguments regarding disclosure. His conclusion is that the public interest in avoiding this prejudice is a strong factor and so considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.

## **Conclusion**

36. Taking all of the above into account, the Commissioner is satisfied that section 31(1)(a) has been applied appropriately in this case and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

## **Other matters**

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37. The complainant requested an internal review on 2 October 2014 but the SFO did not respond until 28 November 2014.
38. Part VI of the section 45 Code of Practice makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information. He considers that the procedure should encourage a prompt determination of the complaint.
39. 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 the 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.
40. The Commissioner is concerned that it took over 20 working days for the internal review to be completed.

## Right of appeal

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41. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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 .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**