

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 May 2016

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

Decision (including any steps ordered)

1. The complainant requested information about the seizure of illegal and counterfeit items at the Port of Tilbury in Essex. The Home Office confirmed it holds information with the scope of the request, but refused to provide it citing section 31(1)(a) and (b) (law enforcement - the prevention or detection of crime and the apprehension or prosecution of offenders) of the FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on sections 31(1)(a) and (b). No steps are required as a result of this decision.

Background

3. Border Force is a law enforcement command within the Home Office. It secures the UK border by carrying out immigration and customs controls for people and goods entering the UK¹.
4. Border Force routinely publishes the national picture of seizures of illegal and counterfeit goods at UK ports².

¹ <https://www.gov.uk/government/organisations/border-force>

² <https://www.gov.uk/government/publications/border-force-transparency-data-august-2015>

5. The complainant requested a breakdown of this information to give the quarterly figures for seizures at a specific port, namely the Port of Tilbury.

Request and response

6. On 9 October 2015, the complainant wrote to the Home Office and requested information in the following terms:

"A breakdown of the information provided in this document: <https://www.gov.uk/government/publications/border-force-transparency-data-august-2015> published by the Border Force on 27th August 2015. I would like the following information just for the Port of Tilbury, located in Essex.

a) Table BF 03: Border Force Drugs Seized Volumes. Please provide the figures for the following drug categories: i) Cocaine (KG), ii) Crack (KG), Diamorphine (Heroin) (KG), iii) Cannabis Resin (KG), iv) Cannabis Herbal (KG). Please provide information from Q1 2011-12 to Q3 2014-15, broken down by quarter.

b) Table BF 05: Convention of international trade of endangered species (CITES) volume. Please provide the figures for the following categories: i) Quantity seized; ii) Kilos of Ivory And Items Containing Ivory, Quantity seized; iii) Units of Live Animals and Birds, Quantity seized; iv) Units of Parts or Derivatives of Animals/Birds v) Quantity seized; Units of Preparations Of Oriental Medicine Which Include Parts & Derivatives Of Endangered Species. Please provide information from Q1 2013 – Q2 2015, broken down by quarter.

c) Table BF 06: Revenue Protected. Please provide figures for the following categories: i) Qty of cigarettes (sticks), ii) Revenue Protected Cigarettes (sticks), iii) Qty Hand rolling tobacco (kg) iv) Revenue Protected Hand rolling Tobacco v) Qty of Spirits (bulk litres), vi) Revenue protected Spirits. Please provide information from Q1 2010 to Q2 2015".

7. The Home Office responded on 10 November 2015. It confirmed that it holds the requested information but refused to provide it citing section 31(1) of the FOIA (law enforcement) as its basis for doing so. Specifically it relied on section 31(1)(a), (b) and (e) (the prevention or detection of crime, the apprehension or prosecution of offenders and the operation of the immigration controls respectively).

8. Following an internal review the Home Office wrote to the complainant on 7 January 2016, revising its position with respect to the subsections it considers applies. It stated that it continues to rely on section 31(1)(a) and (b) but told her that it is no longer relying on section 31(1)(e).

Scope of the case

9. The complainant provided the Commissioner with the relevant documentation on 2 February 2016 to complain about the way her request for information had been handled.

10. She told the Commissioner:

"I do not believe that the Home Office has been able to substantiate their reason for applying S31 (a) and (b).I do not accept that information on the quantities of seizures at particular ports would give criminals information about the deployment of Border Force resources, or the effectiveness of the operations of border force teams at different UK ports".

11. She described the information she is requesting as "*less specific information*" than the information Border Force releases into the public domain of its own volition.
12. In the absence of its substantive response regarding its handling of this request, on 3 March 2016 the Commissioner issued the Home Office with an Information Notice in accordance with his powers under section 51 of the FOIA. By way of that Notice the Commissioner required the Home Office to furnish him with further information about its handling of the request for information in this case.
13. In response to that Information Notice the Home Office confirmed the exemption it considers applies, namely section 31 (law enforcement). It also confirmed that it considers that subsections 31(1)(a) (the prevention or detection of crime) and 31(1)(b) (the apprehension or prosecution of offenders) both apply equally to the withheld information.
14. The analysis below considers the Home Office's application of section 31 of the FOIA to the withheld information. That information comprises a quarterly breakdown of Border Force transparency data for the Port of Tilbury.

Reasons for decision

Section 31 - law enforcement

15. Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests. In this case the Home Office considers that sections 31(1)(a) and (b) apply. Those sections state:

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

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,"

16. Consideration of this exemption involves two stages. First, 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.

17. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

18. Covering first whether the exemption is engaged, the relevant applicable interests cited in this exemption are the prevention or detection of crime and the apprehension or prosecution of offenders.

19. In correspondence with the complainant, the Home Office explained:

"This information is used by Border Force, along with other types of management information and intelligence, to determine the deployment of resources at specific times and locations. This, together with other data which might be requested via FOI

requests, would provide useful information, especially to organised criminals, on which port to target and increase chances of circumventing border and custom controls”.

20. In the complainant's view the envisaged harm is not reasonable. She disputes that the disclosure of port specific information would provide offenders with details about capacity and resources deployed at different ports.

21. In correspondence with the Home Office, she argued that similar information to that requested is already in the public domain:

“because the Home Office puts out pro active press releases after large seizures – which they want the media to report on...”.

22. In that respect, the complainant said:

“If the Home Office is happy to proactively publicise the work of the Border Force and give the dates and times and locations of where large seizures were made, then it cannot also argue that to publish this information on a quarterly basis would be revealing too much about its activities”.

The nature of the prejudice

23. In order for the exemption to be engaged, the Home Office must show that the prejudice it is envisaging affects the particular interests that the exemption is designed to protect.

24. With respect to the nature of the prejudice the Home Office said:

“If the Home Office were to release the information requested, it would in effect be signalling a willingness to disclose similar information for any port. Others, including those wishing to smuggle drugs and other contraband through UK ports, could then submit requests for information for all the individual ports in the UK. This would allow them to build up a “mosaic” picture of the success and failure rates to detect drugs and contraband at UK ports. This information could then be used by those seeking to circumvent border controls to assess resource deployment and success rates”.

25. The Home Office also told the Commissioner that disclosure would allow potential offenders an insight into the security measures and capabilities used at UK borders.

The likelihood of the prejudice occurring

26. With respect to the likelihood of prejudice occurring, in its correspondence with the Commissioner the Home Office clarified that it considers that the likelihood of prejudice occurring is high. In other words, it considers that the higher level of likelihood - would prejudice - applies.

Is the exemption engaged? Would disclosure prejudice law enforcement?

27. The information withheld by virtue of this exemption comprises information relating to the seizure of drugs and other goods brought into the country illegally at a specific port.
28. The Home Office's arguments concern the provision of details to potential offenders about the capacity and resources deployed at individual ports and a willingness to disclose similar information relating to other ports.
29. The Commissioner accepts that the Home Office has argued above that the harm envisaged relates to the applicable interests in this exemption.
30. The Commissioner also recognises that the Home Office's argument is not that disclosure of port specific information would, on its own, prejudice their law enforcement capabilities. Rather its argument is that disclosure of seizure information for various different locations over a period of time would allow a widespread picture of its successes, and by implication its deployment of resources, to be built up.
31. Essentially therefore, the danger from disclosure of this information is that a precedent of disclosure would be set.
32. While the Commissioner does not share the view that compliance with this request would clearly set a precedent for future cases, he accepts that it would at least make it more difficult in principle to refuse information in similar cases in future. The Home Office was therefore correct to consider the possibility of a mosaic effect – ie that the disclosure of port specific information could be combined with other information already in the public domain, or with information the authority could be forced to subsequently reveal as a result, to target its operations.
33. The Commissioner accepts that disclosure of the requested information in this case may well encourage others to request comparative data for other ports. It will also indicate the level of activity at that particular port and provide some intelligence about the likelihood of success in trying to smuggle contraband through there.

34. Having duly considered the arguments put forward by the Home Office, and having viewed the withheld information, the Commissioner is satisfied that the arguments are relevant to section 31(1)(a) and (b). He is also satisfied that the likelihood of prejudice occurring if the withheld information were to be disclosed is more probable than not. Accordingly the Commissioner accepts that, in the circumstances of this case, the higher threshold of likelihood is met.
35. As the Commissioner accepts that the outcome of disclosure predicted by the public authority would occur he is therefore satisfied that the exemption provided by sections 31(1)(a) and (b) is engaged.

The public interest test

36. Section 31 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

37. In support of disclosing the requested information the complainant told the Home Office:

"As well as increasing the openness and transparency of the Border Force, which you acknowledge is a benefit there are several other factors favouring disclosure. Prosecuting those responsible for smuggling illegal substances or products is an important part of government policy, as is ensuring that people pay the appropriate amount of tax for bringing legal but counterfeit items into the UK. Releasing the information I have requested would help to explain how the government puts these policies into practice".

38. The Home Office acknowledged the public interest in transparency regarding UK borders. In that respect it told the complainant:

"The Home Office accepts that transparency and openness regarding UK borders is important to ensure general awareness of drug smuggling, the importing of endangered species and alcohol/tobacco seizures attributed to a particular port. Providing port specific information would indicate whether resources deployed at these ports is being used effectively and value for money, but also provide further details on the type of seizures at these ports".

39. The complainant also argued that disclosure in this case:

".. would also help to protect the public from harm because it would make people aware if there are counterfeit items like cigarettes

being sold in their area. Since counterfeit cigarettes are not regulated, people do not know what is in them and it could damage their health”.

Public interest arguments in favour of maintaining the exemption

40. In favour of maintaining the exemption, the Home Office told the complainant that providing the requested information would allow potential offenders an insight into the security measures and capabilities used at the UK borders and ports. In its view, disclosure:

“will allow offenders, especially in organised crime, to utilise this information in circumventing border and customs controls, or adapting their methods for evading capture or detection”.

41. In support of its withholding the requested information, the Home Office told the Commissioner that it was not in the public interest to release information that provides an insight into the security measures and capability used at the UK borders and ports. It explained that if the quantities of seizures were made public:

“an individual who wished to smuggle contraband into the UK could use the information to assess or test the likelihood of success in trying to smuggle contraband through a particular port. It would be possible to compare volumes of goods successfully trafficked with data on seizures, to assess the relative effectiveness of different ports in stopping trafficking; this information could then be used to plan other attempts”.

42. Responding to the suggestion that this argument is undermined because the Home Office routinely publishes press releases about large seizures, the Home Office said that such information is only released when it is judged to be safe and in the public interest to do so.

Balance of the public interest arguments

43. The Commissioner acknowledges that there is a strong public interest in the Home Office being accountable for its performance and that it is as transparent as possible about how effective border controls are. Disclosure of the requested statistics for the Port of Tilbury would provide the public with a greater understanding of its success at a local level, for example in tackling drug smuggling and the importing of endangered species.
44. The Commissioner also recognises that there is a public interest in bringing to light information which may affect public health and public safety. However, it does not follow that smuggled goods and counterfeit items will be distributed locally. Therefore, even if the requested

information was disclosed this would not necessarily allow the public to draw any valid conclusions as to the availability of such goods in the Tilbury area.

45. There is a very strong public interest in protecting the law enforcement capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders.
46. In this case, he recognises the strong public interest in preventing individuals – and organised gangs - intending to circumvent border controls from having access to information which could assist them in building a pattern of seizures at different ports. Clearly, the disclosure of any information that would assist criminals to bring goods into the country illegally would not be in the public interest. He also notes that, where possible, the Home Office does share information in a managed and proportionate way in order to satisfy the public interest.
47. 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

48. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

49. 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.
50. 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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