

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 March 2019

Public Authority: Department for Digital, Culture, Media & Sport
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for Digital, Culture, Media & Sport (DCMS) for its Information Asset Register and a list of cost codes issued by the department. The DCMS initially withheld all of this information on the basis of section 31(1)(a) (law enforcement) and part of it on the basis of section 40(2) (personal data) of FOIA. The DCMS subsequently disclosed the list of costs codes in full and a redacted version of the Information Asset Register. The Commissioner has concluded that the information redacted from the Information Asset Register is exempt from disclosure on the basis of section 31(1)(a) and that in all the circumstances of the case the public interest favours maintaining this exemption.

Request and response

2. The complainant submitted the following request to DCMS on 2 July 2018:

'I am sending this request under the Freedom of Information Act.

1) Please provide me a copy of your authority's latest information asset register.

2) Please provide me a list of all cost codes used by your authority.'

3. DCMS responded on 30 July 2018 and explained that it considered the request to be vexatious and was therefore seeking to refuse to comply with it on the basis of section 14(1) of FOIA.

4. The complainant contacted DCMS on the same day and asked it to conduct an internal review of this decision.
5. DCMS informed him of the outcome of the internal review on 29 August 2018. The review concluded that the request was not vexatious. However, DCMS argued that both the Information Asset Register (IAR) and cost codes were exempt from disclosure on the basis of section 31(1)(a) (law enforcement) of FOIA. DCMS also explained that some information on the IAR was also exempt from disclosure on the basis of section 40(2) (personal data) of FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 5 September 2018 in order to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, DCMS provided the complainant with redacted versions of the IAR and the cost codes. It subsequently provided the complainant with a complete and unredacted copy of the cost codes. Therefore, at the point that this decision notice is being issued the only information which the DCMS is seeking to withhold consists of parts of the IAR which have been withheld on the basis of section 31(1)(a) with section 40(2) also being used to withhold some parts of this information. Consequently, this decision notice simply considers whether these remaining parts of the IAR are exempt from disclosure on the basis of the exemptions cited by the DCMS.

Reasons for decision

Section 31 – law enforcement

8. 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 this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime,'

The DCMS' position

9. In its response to the complainant when it disclosed the redacted version of the IAR, the DCMS explained that it remained of the view that disclosure of the redacted information contained in specific columns and rows would be likely to prejudice the prevention of crime. It explained that the columns and rows concerned contain sensitive details into the specifics of exactly how this information is stored, including how many people have access, how to access the information, the business criticality of the information and the risk of unauthorised disclosure of this information. The DCMS argued that release of this information would provide nefarious third parties with information they could use to help facilitate an attack on the department's information. The DCMS argued this knowledge would also raise the profile of the department to these nefarious parties, who would know the types of information they are able to obtain from the department, and would be likely to aid plans to attack the department. It suggested that this information would also alert those with hostile intentions to potential security weaknesses in its data storage, which would again aid an attack on the department. The DCMS also argued that release of this information would help these nefarious parties focus their attacks on the department rather than conducting indiscriminate attacks.
10. As part of its submissions to the Commissioner the DCMS provided her with further detailed arguments to support its position that the information which it was still seeking to withhold on the basis of section 31(1)(a) would be likely to result in prejudice to the prevention or detection of crime. Such submissions made direct reference to the content of the withheld information itself and therefore the Commissioner is limited in respect of how much of these submissions she is able to include in this notice. However, the Commissioner can confirm that the DCMS explained that in terms of determining whether any information contained in the IAR could be disclosed, it had taken into account the IARs disclosed by some other government departments. The DCMS argued that the level of information contained in its IAR that had now been provided to the complainant mirrored these previous releases. However, the DCMS noted that its IAR contained a significant volume of additional detailed and comprehensive information about each asset the department held and it was this information it was seeking to withhold for the reasons set out in its response to the complainant, along with the complete details of a very limited number of assets.

The complainant's position

11. In his submissions to the Commissioner the complainant noted that other government departments had disclosed versions of their IARs

under FOIA. He also argued that it seemed highly unlikely that disclosure by the DCMS of the IAR would result in a security threat given that the only information provided would be what datasets are held.

The Commissioner's position

12. In order for a prejudice based exemption, such as section 31(1), to be engaged the Commissioner considers that three criteria must be met:
 - Firstly, 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;
 - Secondly, 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
 - Thirdly, 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. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
13. With regard to the first criterion, the Commissioner accepts that the potential prejudice described by the DCMS clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
14. With regard to the second criterion, the Commissioner accepts that the threat from cyber-attacks that the DCMS faces are clearly real ones. She also accepts that any additional information about the DCMS IT systems could *in theory*, be useful to those with a malicious intent to allow them to better target any attack on those systems. As a result the Commissioner accepts that it plausible to argue that there is a causal link between disclosure of the information and prejudice occurring. Consequently, the Commissioner accepts that any such resultant prejudice if the redacted part of the IAR were to be disclosed is real, actual and of substance.

15. With regard to the third criterion, the Commissioner is satisfied that if the withheld information was disclosed there is a more than a hypothetical possibility that prejudice of the nature envisaged by DCMS would be likely to occur. The Commissioner has reached this decision given the particular level of detail about individual assets which has been redacted by the DCMS namely details of how this information is stored, including how many people have access, how to access the information, the business criticality of the information and the risk of unauthorised disclosure of this information. In the Commissioner's view this level of detail – which goes beyond that included in previous versions of IARs disclosed by other government departments – would be likely to provide those with a malicious intent a particular and specific advantage in gaining access to the DCMS information assets and/or IT systems. Furthermore, the Commissioner is also persuaded that disclosure of *any* information the very small number of assets which the DCMS which has also redacted from would be likely to be harmful for similar reasons.
16. Section 31(1)(a) is therefore engaged.

Public interest test

17. However, section 31(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest in disclosure of the information

18. The complainant argued that there is a public interest in the disclosure of the IAR in order to inform him, and other members of the public, what information the DCMS holds so that he, and others, can better hold it to account.
19. The DCMS accepted that there is a general public interest in government being more open, transparent and accountable, and that this transparency helps the public see that the government takes decisions that are in the best interests of the public. It also acknowledged that it is clear that there is a public interest in ensuring that the department stores its data and information in such a way that is as protected as possible. This helps prevent lax security in its information storage.

Public interest in maintaining the exemption

20. However, the DCMS argued it is clearly not in the public interest to release information which could be used to aid planned attacks on the department and its information. It noted that in the current climate,

where more and more information is stored electronically and cyber-attacks are on the rise - using ever more ingenious techniques - it is imperative that it protects the information it holds. The DCMS therefore argued that to expose this information to risk would be reckless, and would not be in the public interest.

Balance of the public interest arguments

21. The Commissioner accepts that there is a public interest in the disclosure of an organisation's IAR register so that the public can be better informed about the nature of the information that an organisation holds and thus make more targeted and focused FOI requests should they wish to. She also agrees that there is a public interest in disclosure of information which would reassure the public that a public authority has taken sufficient security measures to protect their information (or conversely if such measures had not been taken, then disclosing information to reveal this).
22. However, at the point this decision notice is being issued the DCMS has now released – for the vast majority of its assets - the title of a particular asset, the date of its creation, the description/purpose of an asset and the department/team that owns it. In her view this disclosure goes a considerable way to meeting the public interests in disclosure discussed above. Whilst disclosure of the remaining information could provide further transparency in respect of the information assets held by the DCMS, the Commissioner accepts that its disclosure would be likely to be prejudicial for the reasons discussed above, and furthermore she accepts that it would be firmly against the public interest to disclose information which would be likely to undermine the prevention or detection of crime. The Commissioner has therefore concluded that in all of the circumstances of the case the public interest favours maintaining the exemption contained at section 31(1)(a) of FOIA.
23. In light of this finding, the Commissioner has not considered the DCMS' reliance on section 40(2) of FOIA to also withhold some of the information redacted from the IAR.

Right of appeal

24. 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

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

25. 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.
26. 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

Jonathan Slee
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