

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 October 2020

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

#### Decision (including any steps ordered)

---

1. The complainant has requested from the Serious Fraud Office (SFO) the identities of Ghanaian individuals suspected of receiving bribes from Airbus. The SFO refused the request, arguing that the information was exempt from disclosure under sections 30(1)(b) and (c) (investigations and proceedings) and 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the SFO was entitled to rely on section 30(1)(b) to refuse the request. The Commissioner requires no steps.

#### Background

---

3. The SFO is a specialist prosecuting authority tackling the top level of serious or complex fraud, bribery and corruption. It is part of the UK criminal justice system covering England, Wales and Northern Ireland.
4. The request relates to an SFO investigation into allegations that Airbus had used external consultants to bribe customers to buy its civilian and military aircrafts.<sup>1</sup> The matter is subject to a deferred prosecution

---

<sup>1</sup> <https://www.bbc.co.uk/news/business-51328655>

agreement (DPA) between the SFO and Airbus, about which the SFO has provided the following information:

***"Background information on DPAs***

*DPAs were introduced in England and Wales by virtue of section 45 and Schedule 17 to the Crime and Courts Act 2013. A DPA provides a mechanism whereby an organisation can avoid prosecution by entering into an agreement with a designated prosecutor which is subject to court approval. A DPA must include a statement of facts which sets out the details relating to the alleged offence. Where a DPA receives court approval, the agreement (including the statement of facts) must be published by the designated prosecutor unless there is a need to postpone publication by order of the court to avoid prejudicing other proceedings. Upon expiry the designated prosecutor must also publish details of the organisation's compliance. Again, publication may be postponed by order of the court to avoid prejudicing other proceedings.*

*Further information about how DPAs work is available on the SFO website which includes a link to Schedule 17 to the Crime and Courts Act 2013: <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/deferred-prosecution-agreements/>.*

***Background information DPA between SFO and Airbus SE***

*On 31 January 2020 a DPA between the SFO and Airbus SE was approved by Dame Victoria Sharp (President of the Queen's Bench Division) for offences of failure to prevent bribery<sup>2</sup>. The DPA is effective for three years from the date it was signed.*

*As required by the legislation, the DPA includes a statement of facts. This document sets out agreed facts about the alleged commission by Airbus SE of offences of failure to prevent bribery in five different jurisdictions, including Ghana (see paragraphs 171 to 211). Throughout the statement of facts, identities of individuals involved in the conduct have not been included. In their place, anonymised terms, such as "Intermediary 5" and "Government Official 1", have been used.*

---

<sup>2</sup> <https://www.judiciary.uk/wp-content/uploads/2020/01/Director-of-the-Serious-Fraud-Office-v-Airbus-SE-1.pdf>

*This issue of anonymisation was specifically considered by the court at the hearing on 31 January 2020. The court endorsed the SFO's anonymisation in the statement of facts and gave reasons why the identity of individuals had not been included. At paragraph 13 of her judgment, Dame Victoria stated:*

*"In the Statement of Facts, the identity of the individuals concerned has not been included. There are ongoing investigations in respect of a number of individual suspects in this jurisdiction and abroad. It is appropriate to protect the rights of the suspects to a fair trial. In addition some of the individuals involved in the relevant conduct are based in jurisdictions where there are human rights concerns, and the death penalty exists for corruption. Further, the intermediary companies used by Airbus were often made up of a few individuals. Naming the companies would therefore be tantamount to naming those individuals. To go further than the Statement of Facts or my summary and identify the employees or others by name, would be to prejudice potential criminal proceedings and could lead to action or the imposition of a penalty which, in this country, we would regard as contravening Article 3 of the European Convention on Human Rights. The identities and positions of relevant employees and other persons referred to in the Statement of Facts have however been made known to me so that I have been able to assess their comparative seniority and, thus, the responsibility of Airbus. In the circumstances however, none are identified."*

*Further information concerning the Airbus DPA is available on the SFO website including links to the agreement, the statement of facts and the judgment of Dame Victoria:*

*<https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/>".*

## **Request and response**

---

5. On 12 February 2020, the complainant wrote to the SFO and requested information in the following terms:

*"I refer to the above Deferred Prosecution Agreement (DPA) with Airbus that the Serious Fraud Office agreed with Airbus through the court recently.*

*According to the DPA, there were Ghanaians who involved with the purchase of aircrafts for the Ghanaian military and alleged to have been paid and received bribe from Airbus. Unfortunately, those Ghanaians were not identified by both names and positions in the DPA.*

*I am by this letter requesting the Serious Fraud Office to reveal the identities of the Ghanaians who received bribe from Airbus in the interest of both UK and Ghanaian public under the Freedom for Information Act 2000. I am particularly interested in the identities and positions of Government Official 1 and Intermediary 5”.*

6. The SFO responded on 25 February 2020. It confirmed that it held the requested information but said that it was exempt from disclosure under section 30(1)(b) and (c) (investigations and proceedings) of the FOIA, and that the public interest favoured maintaining the exemption.
7. The complainant requested an internal review of the SFO’s response on 25 February 2020. He disagreed with its decision to withhold the information.
8. The SFO responded on 26 May 2020. It upheld its application of section 30(1)(b) and (c). It said that it also considered that the information was exempt under section 40(2) (personal information) of the FOIA.

## **Scope of the case**

---

9. The complainant contacted the Commissioner on 29 May 2020 to complain about the way his request for information had been handled. He disagreed that disclosing the identities of the individuals would prevent or inhibit the SFO from carrying out further investigations or instituting criminal proceedings. He believed that the DPA implied that the investigations had been completed and that criminal prosecutions were imminent. He also cited media reports which purported to identify some of the alleged suspects in the case.
10. The analysis below considers whether the SFO was entitled to rely on the exemptions cited to refuse to disclose the withheld information.
11. The Commissioner has not found it necessary to be provided with the identities of the individuals in order to reach a decision on this matter.

## Reasons for decision

---

### Section 30 – investigations and proceedings

12. The SFO has argued that the withheld information is exempt from disclosure under sections 30(1)(b) and (c) of the FOIA, which state:

*"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –*

...

*(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or*

*(c) any criminal proceedings which the authority has power to conduct."*

13. The Commissioner considers that the phrase "*at any time*" means that information can be exempt under sections 30(1)(b) and (c) if it relates to a specific ongoing, closed or abandoned investigation or proceedings.
14. Consideration of the sub-sections of section 30(1) is a two-stage process. First, the exemptions must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

*Is section 30(1)(b) engaged?*

15. The Commissioner's guidance on section 30 states the following:

*"Section 30(1)(b) ... applies to investigations but the public authority only needs to have the power to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation."*<sup>3</sup>

---

<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

16. Sections 1(3) and (5) of the Criminal Justice Act 1987 empower the Director of the SFO to investigate and prosecute offences which appear to her to involve serious or complex fraud, bribery and corruption. The Director of the SFO is also a designated prosecutor for the purpose of DPAs, meaning that she may exercise the power to enter into a DPA<sup>4</sup>.
17. The Commissioner is therefore satisfied that the withheld information in this case was held for the purposes of an investigation conducted by the SFO, with a view to it deciding whether to institute proceedings which it has the power to conduct. It follows that she is satisfied that section 30(1)(b) is engaged.

*Public interest test*

18. Section 30(1)(b) is subject to the public interest test. The Commissioner has therefore considered whether the public interest in maintaining the exemption at section 30(1)(b) outweighs the public interest in disclosing the withheld information.
19. When considering the public interest in maintaining an exemption, the Commissioner considers that it is necessary to be clear what the specific exemption is designed to protect.
20. The purpose of section 30(1)(b) is to preserve the ability of the police, and other applicable public authorities, such as the SFO, to carry out effective investigations, which may or may not lead to formal proceedings. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the disclosure of the withheld information could have a harmful impact on the ability of the authority to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of authorities to investigate crime effectively.

*Public interest arguments in favour of disclosing the information*

21. The complainant believes that the public interest favours the Ghanaian public knowing the identities of Ghanaians suspected of involvement in this matter.
22. The SFO recognised that there is a public interest in favour of disclosing the withheld information to promote transparency and to aid public understanding of the work that the SFO undertakes.

---

<sup>4</sup> paragraph 3 of Schedule 17 to the Crime and Courts Act 2013

23. It also provided other public interest arguments favouring disclosure, which, for confidentiality reasons, the Commissioner cannot reproduce here.

*Public interest arguments in favour of maintaining the exemption*

24. The SFO said that the public interest in transparency and promoting understanding was already met by its publication of casework information on its website. It said that the Airbus DPA has its own dedicated SFO webpage which sets out an overview of the SFO's investigation and provides links to relevant documents about the matter.
25. It also argued that to identify the individuals specified in the request would prejudice potential criminal proceedings, prejudice potential defendants' right to a fair trial and also raise other human rights concerns. It explained that the investigation remains active in the UK and Ghana, and that further proceedings may follow. Therefore, to disclose the withheld information could prejudice fair trial rights, both in the UK, and abroad.
26. The SFO said that the matter is also the subject of a DPA that Airbus has entered into with authorities in the United States (US). As with the UK DPA, all references to individuals have been anonymised in the US DPA. Therefore, the disclosure of the withheld information could undermine the US investigation and DPA, where the authorities also considered that anonymity for the individuals was appropriate in the circumstances.
27. Finally, the SFO noted:

*"... releasing the names of the individuals would usurp the court's decision-making in relation to withholding the names in the statement of facts. At the time of the hearing the identities of the individuals were made known to Dame Victoria and she endorsed their anonymisation when approving the DPA. [The complainant's] suggestion that releasing the information would not undermine ongoing criminal proceedings is inconsistent with the position taken by Dame Victoria. It is also noted that Dame Victoria is President of the Queen's Bench Division and one of the most senior judges in England and Wales. This reinforces the SFO's view that the approach outlined in paragraph 13 of her judgment should be maintained."*

*Balance of the public interest*

28. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in the SFO disclosing the withheld information. The Commissioner has also considered whether disclosure would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.
29. The Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases. The Commissioner also accepts that there is a presumption running through the FOIA that openness is, in itself, to be regarded as something which is in the public interest.
30. In this case, the request asks for the identities of Ghanaian individuals suspected of accepting bribes from Airbus. Having had regard to the purpose of the FOIA, which is to promote the transparency and accountability of the UK government and UK public authorities, the Commissioner does not consider that this information, if disclosed, would add to the public's understanding of the decisions taken by the SFO in the matter. On that point, the Commissioner notes that a substantial amount of information about the matter is already in the public domain, via the information in the DPA.
31. The complainant has argued that the identities of those under investigation are already in the public domain, via media reports. He also says the DPA implies that the investigation has been completed. While the Commissioner notes media reports which purport to identify the individuals under investigation, she has seen no evidence that this information comes from formal disclosures previously made by the SFO. There is therefore nothing to suggest that these reports are accurate and their source is unknown and unverified. She is therefore satisfied that disclosure of the withheld information under the FOIA would be a disclosure of new information into the public domain, by the SFO.
32. The Commissioner also notes that the SFO rejects any suggestion that the investigation has been concluded. Having had regard to the comments in the DPA about the ongoing nature of various strands of investigation, the Commissioner accepts this position and does not share the complainant's interpretation that it has been concluded.
33. The Commissioner has accorded considerable weight to the SFO's arguments that the decision to provide anonymity to the individuals has been endorsed by one of the UK's most senior judges, when approving



the DPA in this case. Requiring the SFO to disclose the material under the FOIA in this case would undermine the independence of these related judicial and prosecution processes.

34. As set out above, the purpose of section 30(1)(b) is to protect the effective investigation and prosecution of offences. It is clearly not in the public interest to jeopardise the ability of the SFO to investigate crime effectively. Furthermore, while the DPA defers prosecution, there remains the possibility of further formal action over the matter, which could be undermined by the disclosure of the withheld information. The Commissioner notes that while revealing information about wrongdoing may help the course of justice, investigations into wrongdoing may need to preserve confidentiality, in order to be effective.
35. Taking all the above into consideration, the Commissioner has decided that, in this case, the public interest in maintaining the exemption outweighs the public interest in disclosure. She is therefore satisfied that the SFO was entitled to refuse the request under section 30(1)(b) of the FOIA.
36. Since the Commissioner has determined that the SFO was entitled to rely on section 30(1)(b) to refuse the request, it has not been necessary to go on to consider the other exemptions cited by the SFO.

## 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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**