

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 November 2023

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

### Decision (including any steps ordered)

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1. The complainant requested a copy of a file that is listed as being closed to public inspection.
2. The Home Office refused to provide it, citing sections 24(1) (national security), 31(1)(a)(b) (law enforcement), 37(1)(a) (communications with the Sovereign), 38(1)(b) (health & safety) and 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that the Home Office correctly applied sections 31 and 37 to withhold all the requested information.
4. The Commissioner requires no steps to be taken as a result of this decision.

### Request and response

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5. On 24 January 2023, the complainant wrote to the Home Office and requested information in the following terms:

"I am writing with regard to a file that is listed as being closed in the catalogue of the National Archives. I believe that the file is held by the Home Office. The file is titled - Royal protection: Metropolitan Police; Kensington Palace - and is listed as H0 287/3636.  
<https://discovery.nationalarchives.gov.uk/details/r/C16730854>

Under the act, I would like to ask for a complete copy of this file to be released."

6. The Home Office responded on 17 April 2023. It confirmed it holds the requested file but refused to provide it, citing the following sections of FOIA:
  - 24(1) (national security);
  - 31(1)(a)(b) (law enforcement);
  - 37(1)(a) (communications with the Sovereign);
  - 38(1)(b) (health & safety); and
  - 40(2) (personal information).
7. The Home Office maintained its position at internal review.

### **Scope of the case**

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8. The complainant disputes the Home Office's refusal to disclose the requested file. They told the Commissioner that, given the apparent age of the file, "the continuing secrecy" does not seem to be justified.
9. With respect to his consideration of the withheld information, the Commissioner has been assisted by a schedule, provided by the Home Office, describing each of the documents in the withheld file and identifying which exemption(s) it considers applies.
10. The Commissioner viewed the withheld information during the course of his investigation. The Home Office confirmed that, as a result of documenting the contents of the file, it identified a small amount of information within the file as being suitable for disclosure.
11. The following analysis explains why the Commissioner is satisfied that the Home Office was entitled to apply sections 31 and 37 to withhold the remaining information within the file.
12. The Commissioner has addressed the matter of the information identified by the Home Office as suitable for disclosure in 'Other matters' below.

### **Reasons for decision**

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#### **Section 31 law enforcement**

13. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.

14. In this case, the Home Office is relying on sections 31(1)(a) and (b) of FOIA to withhold the majority of the information in the requested file. These subsections state that information is exempt if its disclosure would, or would be likely to, prejudice:
- (a) the prevention or detection of crime;
  - (b) the apprehension or prosecution of offenders.
15. In order to engage a prejudice-based exemption, such as section 31, there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice-based exemption:
- First, 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.
16. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
17. Rather than differentiate between the subsections of the exemption, the Home Office presented one set of arguments. The Commissioner recognises that there is clearly some overlap between subsections 31(1)(a) and 31(1)(b) and he has therefore considered these together.

### **The applicable interests**

18. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activities mentioned in sections 31(1)(a) and (b) – the prevention or detection of crime and the apprehension or prosecution of offenders.

19. With respect to law enforcement activities, the Commissioner recognises in his published guidance<sup>1</sup> that section 31(1)(a) will cover all aspects of the prevention and detection of crime:

“It could apply to information on general policies and methods adopted by law enforcement agencies, as well as information about specific investigations”.

20. With respect to section 31(1)(b), he recognises that this subsection “... could potentially cover information on general procedures relating to the apprehension of offenders or the process for prosecuting offenders”.

21. The Commissioner acknowledges that the arguments presented by the Home Office refer to prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders and that the appropriate applicable interests have therefore been considered.

### **The nature of the prejudice**

22. The Commissioner next considered whether the Home Office has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that sections 31(1)(a) and (b) are designed to protect. In his view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.

23. The Home Office advised the complainant:

“Disclosing the content of this file would reveal the type of security measures in place and indicate possible vulnerabilities of security provisions. [...] Disclosure would compromise the safety of the individuals these arrangements seek to protect. Despite the passage of time, the information contained within the file remains relevant today as the residences are still in use”.

24. Similarly, the Home Office told the Commissioner:

“The file predominantly contains sensitive security and public protection information relating to a number of royal residences –

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/sections-31-1-a-f-criminal-and-civil-law/>

which are still in use today by Members of The Royal Family, members of staff and the general public”.

25. Addressing the concern raised by the complainant about the age of the file, the Home Office explained:

“Although the file dates from the 1980s, the information it contains, i.e., the details of the type and scope of protection given to certain buildings is unlikely to have changed significantly over time”.

26. On the evidence provided, the Commissioner is satisfied that the Home Office has demonstrated a causal link between the requested information and the applicable interests relied on, and that disclosure is capable of having a detrimental impact on law enforcement.

### **Likelihood of prejudice**

27. With regard to the likelihood of prejudice if the information was disclosed, the Home Office considers the risk meets the higher test of ‘would occur’.

### **Is the exemption engaged?**

28. In a case such as this, it is not enough for the information to relate to an interest protected by sections 31(1)(a) and (b); its disclosure must also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it would occur.
29. The Commissioner recognises the importance of protecting information which, if disclosed, is capable of undermining law enforcement activity.
30. Having considered the arguments put forward by the Home Office, the Commissioner accepts that disclosure would provide intelligence which could be used by criminals, or by those with intent to do harm, to circumvent policing measures in place.
31. Consequently, the Commissioner is satisfied that disclosure would represent a real and significant risk to law enforcement matters.
32. As the Commissioner accepts that the outcome of disclosure predicted by the Home Office would occur, he is satisfied that the exemptions provided by sections 31(1)(a) and (b) are engaged.

### **Public interest test**

33. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at sections 31(1)(a) and (b) of

FOIA outweighs the public interest in disclosing the information requested by the complainant.

### **Arguments in favour of disclosure**

34. The complainant considers that release of the file would allow for a more informed democratic debate about royal protection.
35. The Home Office acknowledge that there is a clear public interest in understanding how public safety and security is maintained at royal residences. It told the complainant:

“In this case, disclosure would provide evidence of how the police provides protection to members of the Royal Household and Royal residences and would provide transparency about how security threats are assessed and safeguarded against. Disclosure could also help to engender trust between the public and law enforcement agencies and provide reassurance that their role is carried out adequately and proportionally”.

### **Arguments in favour of maintaining the exemption**

36. In favour of maintaining the exemption, the Home Office told the complainant that public safety is of paramount importance to the policing purpose. It said that disclosure in this case would not be in the public interest, as disclosure would provide terrorists, criminals or fixated individuals “with vital intelligence as to the levels of protection that might be afforded to Royal residences and to the level of resistance that they may encounter when committing criminal or terrorist acts”.
37. It also considered that the information, if released, may also encourage individuals with criminal intent to modify their criminal behaviour to reduce the probability of being apprehended.

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

38. In carrying out the statutory balancing exercise in this case, 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 law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise the ability of the police to provide security or good order and to protect people from the impact of crime.
39. In that respect, the Commissioner recognises that there is a very strong public interest in protecting the law enforcement capabilities and he 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.

40. In the Commissioner's view, procedures, methodologies and targeting of police operations can only be effective when they are not publicly known. He also accepts that safeguarding individuals – including Members of the Royal Family – is of paramount importance.
41. He gives weight to the argument that disclosure of the data requested would be to the detriment of members of The Royal Family, members of staff and the wider public, as those seeking to evade the law may be able to ascertain how best to do so. Clearly, it would not be in the public interest to disclose sensitive security information which would facilitate the criminal actions of those with hostile interests.
42. The Commissioner recognises the need to ensure transparency and accountability and accepts that the complainant has concerns about the relevance of the file given its age and considers that release of the file would allow for a more informed democratic debate about royal protection.
43. Having carefully balanced the opposing factors involved in this case, the Commissioner finds that the public interest in maintaining the section 31(1)(a) and (b) exemptions outweighs the public interest in disclosure.
44. The Commissioner has next considered the Home Office's application of section 37 to the remaining information within the scope of the request.

### **Section 37 – Communications with His Majesty, etc. and honours**

45. The exemption at section 37(1) states:

“Information is exempt information if it relates to—

(a) communications with the Sovereign,

(aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,

(ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,

(ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and

(ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs),

...].”

46. With respect to the small amount of withheld information not covered by section 31, the Home Office is relying on the section 37(1) exemption. Specifically it considers sections 37(1)(a) and (aa) apply.
47. The Commissioner's published guidance states:
- "Sections 37(1)(a), 37(1)(aa) and 37(1)(ab) provide an exemption from disclosing information if it covers communications with or on behalf of:
- the Sovereign or the heir to the Throne;
- the person second in line of succession to the Throne; or
- a person who has subsequently come to the throne or become heir or second in line to the Throne.
- Information relating to communications with the Sovereign and heir, either currently or after they assume those roles, only has to fall within the scope of these exemptions to be withheld".
48. Having viewed the information that has been withheld from disclosure under section 37(1), the Commissioner is satisfied that sections 37(1)(a) and (aa) apply to all of that information.
49. Section 37(1) is an absolute exemption. This means that where the exemption is engaged there is no public interest test to be considered. The withheld information simply has to fit the exemption.
50. The Commissioner is therefore satisfied that the Home Office was entitled to withhold the information on the basis of the exemption at section 37(1)(a) and (aa) of FOIA.

### **Other exemptions**

51. As the Commissioner has concluded that the Home Office correctly applied sections 31 and 37, he has not gone on to consider the other exemptions cited by the Home Office in this case.

### **Other matters**

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52. As noted above, during the course of the Commissioner's investigation, the Home Office identified some information within the file that is suitable for disclosure.
53. The Commissioner anticipates that the Home Office will disclose that information on receipt of this Notice, if it has not already done so.



## **Right of appeal**

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54. 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: 0203 936 8963

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)

55. 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.

56. 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 .....**

**Gerrard Tracey  
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