

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 December 2007

Public Authority: Her Majesty's Revenue & Customs ('HMRC')
Address: 1 Parliament Street
London
SW1A 2BQ

Summary

The complainant requested details of items seized by HMRC at Bristol airport, Avonmouth and Portbury docks for the financial years 2004/05 and 2005/06. HMRC refused to disclose this information because it considered it to be exempt from disclosure on the basis of section 31(1)(a) (prevention or detection of crime). Having reviewed the withheld information the Commissioner has decided that HMRC appropriately relied upon section 31 when refusing the information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 7 August 2006 the complainant submitted the following request to HMRC:

'A breakdown, by type, quantity and value, of items seized by customs officers at Bristol airport and Avonmouth and Portbury docks in the financial year 2004-2005 and 2005-2006'.
3. HMRC contacted the complainant on 11 September 2006 and confirmed that although it held the information he requested it believed that it was exempt from disclosure on the basis of section 22(1) and section 31(1) of the Act. With regard to the applicability of section 22, HMRC explained that in due course national seizure results will be published in HMRC's annual report and therefore 'the figures you require will be included in the national figures when they are published'. With regard to the applicability of section 31, HMRC explained that

disclosure of the requested information 'might enable those intent on wrongdoing to deduce the level of our presence at particular locations. And that might enable them to subvert our operational effectiveness thus putting at risk law enforcement. Because of that 31(1)(a), (b) and (d) are engaged'. HMRC also explained to the complainant that it had considered the public interest test in relation to both exemptions and concluded that in both cases the public interest favoured withholding the requested information.

4. The complainant contacted HMRC on 12 September 2006 and requested an internal review of this decision. In his letter to HMRC the complainant highlighted the fact that he had made a very similar request the previous year and had been provided with that information. The complainant therefore asked HMRC to explain what factors had led it to refuse his latest request. The complainant also suggested that the exemption contained at section 22 had been misapplied because the disclosure of national level statistics would not fulfil the requirements of his request. The complainant also drew HMRC's attention to a number of factors which he suggested meant that disclosure of the requested information was in the public interest.
5. HMRC contacted the complainant on 24 October 2006 and informed him that following the internal review its position remained that the information he had requested was exempt under section 31. With regard to the complainant's argument that HMRC had previously disclosed very similar information to him, HMRC explained that 'a public body must reserve the right to keep its policy on the release of information under review in the light of its changing perception of the associated risks, and such applies in this case in respect of the threat posed by highly organised criminal gangs'.

The Investigation

Scope of the case

6. On 16 November 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled and asked the Commissioner to consider whether the information he had requested had been appropriately withheld.

Chronology

7. On 25 September 2007 representatives of the Commissioner's office met with representatives of HMRC in order to discuss another case (reference number FS50122063) which the Commissioner was investigating. In this related case, the complainant had asked for information about the quantity of drugs seized by HMRC in Devon and Cornwall between 2001 and 2005 and this request was refused on the basis of section 31. HMRC's reasoning behind the application of section 31 in this case was very similar to its reasoning behind the decision to refuse the request in case FS50122063 on the basis of section 31.

8. Following this meeting the Commissioner wrote to HMRC on 27 September 2007 and asked it confirm in writing a number of points which were discussed at the meeting.
9. On 11 October 2007 HMRC provided the Commissioner with background information which explained how HMRC was structured and along with specific arguments and evidence to support its contention that the requested information in this case (and in case FS50122063) was exempt by virtue of section 31(1)(a).
10. Having reviewed this response, the Commissioner wrote to HMRC again on 7 November 2007 and asked for clarification on a number of points along with a copy of the information originally requested by the complainant.
11. On 16 November 2007 the Commissioner received this clarification from HMRC along with a copy of the requested information.

Analysis

Section 31- Law Enforcement

12. Section 31 is a prejudice based exemption and therefore to engage the exemption HMRC must demonstrate that disclosure would, or would be likely to, prejudice its ability to prevent or detect crime.
13. The Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15). This interpretation followed the judgment of Mr Justice Mundy in *R (on the application of Lord) v Secretary of State for the Home Office [2003]*. In this case the Court concluded that 'likely connotes a degree of probability that there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there 'may very well' be prejudice to those interests, even if the risk falls short of being more probable than not'. With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
14. In this case a number of the arguments that HMRC has advanced to support their application of section 31, along with the evidence used to support these arguments, describe in detail the methods used by HMRC to detect smugglers. Therefore the Commissioner considers that it is not possible for him to comment in great detail on HMRC's reliance on section 31 because to do so may reveal details not only of the withheld information, but also HMRC's techniques and strategies for apprehending criminals intent on smuggling illicit goods into the UK.

HMRC's position

15. In correspondence with the Commissioner, HMRC has acknowledged that isolated disclosure of seizure information (such as that requested in this case) would not, on its own, prejudice their law enforcement capabilities. Rather HMRC's 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. Therefore organised criminals intent on smuggling illegal goods into the UK would be able to get a picture of HMRC's strengths and weaknesses in relation to a number of locations. Essentially therefore, the danger from disclosure of this information is that a precedent of disclosure would be set which would result in a matrix of HMRC's results (and as a consequence their deployment strategies) for drug seizures for all ports and airports would be available and could be used by criminals to circumvent frontier controls.
16. In order to support this contention HMRC has highlighted a number of factors. HMRC has also noted that there is considerable evidence to suggest that criminals are known to research the HMRC's law enforcement capabilities and border controls in order to assess HMRC's perceived strengths and weaknesses. HMRC have drawn the Commissioner's attention to the following extracts from the Serious Organised Crime Agency's ('SOCA') publication 'UK Threat Assessment 2006/7':

'a number of factors influence the logistical choices smugglers make, including...their perception of risk and understanding of law enforcement methods...they (serious organised criminals) value, in particular, information on law enforcement operations, intentions, techniques and capability'. (Paragraphs 3.16 and 3.18

http://www.soca.gov.uk/assessPublications/downloads/threat_assess_unclassified_250706.pdf)
17. Furthermore, HMRC has noted that drug smugglers are highly motivated because of the large financial gains which can be made from the importation and distribution of illicit goods, in particular Class A drugs.
18. In contrast HMRC has argued that as a publicly funded organisation its resources are limited and in order to combat smuggling it must target resources both intelligently and effectively. Given the limited resource available to HMRC any disclosure which assisted smugglers to have a greater understanding of its methods and techniques would have an immense and detrimental effect on its ability to prevent and detect crime.

The Commissioner's position

19. As is clear from the above, the key to HMRC's argument as to why this information should be withheld is the fact that it will set a precedent which it will have to follow when dealing with similar requests in the future. The prejudicial effects come not from the disclosure of the specific data requested by this complainant, but rather from the matrix of information which could be developed

following disclosure about drug seizures for most, if not all, airports and ports over a similar time period.

20. In analysing the concept that disclosure of particular set of data will set a precedent for a public authority which it will have to follow when dealing with similar requests under the Act, the Commissioner has been influenced by the Information Tribunal's decisions in the following two cases: *Mr Paul Hemsley v Information Commissioner* (EA/2005/0026) and *Bucks Free Press v Information Commissioner* (EA/2006/0071). Both of these cases involved requests for information about speed cameras.
21. In the earlier tribunal case of the two, Hemsley, the request, amongst other things, asked for the number of times that drivers had been caught at a particular camera site since its installation. The requester was interested in being provided with the information because of the concerns surrounding the visibility of the camera warning signs at this particular location. The public authority in question refused to disclose the information on the basis of sections 31(1)(a), 31(1)(b) and 38(1)(a). As part of its arguments to support the applicability of these exemptions, the public authority argued (and the Commissioner accepted in his decision notice) that the disclosure of the information in this case for a particular camera site would be likely to encourage a stream of further requests in relation to other sites which would be hard to resist given the precedent that would be set by disclosure of this information. In relation to this point, the Tribunal commented that:

'we are impressed by the argument as to "setting a precedent". Whilst every request must be dealt with on its merits, if this request were granted, it is not hard to envisage difficulties faced by police authorities in dealing with future requests for such information, justified more or less plausibly, as designed to test the efficacy of signs, the hazards posed by weather conditions or the vigilance of drivers at particular times of the day. It might be difficult to distinguish between the public-spirited motivation of such as the appellant and others whose purpose was less admirable'. (Tribunal at paragraph 23).
22. The Tribunal went on to conclude that on the basis of the setting of precedent argument outlined above, along with other factors, the requested information should not be disclosed.
23. This concept of setting a precedent was touched upon again in the later Tribunal decision, *Bucks Free Press*. In contrast to the Hemsley case, this case involved a request for the combined figures for the number of times drivers had been caught speeding at two adjacent sites rather than a request for the figures for a single camera site. However, as with the Hemsley case, the public authority in this case also relied on sections 31(1)(a), 31(1)(b) and 38(1)(a) to withhold the requested information.

24. The applicability of the precedent setting argument was covered in the following way:

'The BFP [Bucks Free Press – the requester] argues that it is asking for the information in respect of one stretch of road only and is not interested in seeking information on other locations with a view to making comparisons. However, that seems to us to miss the point. The perceived risk is, not that BFP will make multiple requests, but that other individuals or organisations will make similar requests in respect of other camera locations and that all the information obtained in this way will then be agglomerated in order to provide a comprehensive view for comparison purposes. The BFP describes this as a far-fetched scenario and suggests that if the train of thought were to be followed then the police could use the same argument to withhold all crime statistics, as criminals could use them to determine where they would be less likely to be caught.' (Tribunal at paragraph 14).

25. Given that there was some dispute as to whether the precedent setting argument provided a sufficient basis to engage the exemptions, the Tribunal identified three points which it needed to consider as part of its assessment:

'a. do we accept that a decision in favour of disclosure in this case would set a precedent that would encourage and enable others to obtain equivalent data in respect of other camera sites?;

b. if so, do we consider that the prospect of several of those who have made such requests combining the information received into a single comparative view for publication is a far-fetched notion (as the BFP contends) or a risk of real substance (as the Information Commissioner contends)?; and

c. if so, do we believe that the result of such a publication would prejudice... the prevention of crime?'

26. The Tribunal went on to find that in respect of questions (a) and (b):

'we should proceed on the basis that there is a real prospect that, if we find in favour of the BFP, the equivalent data in respect of many other camera sites managed by the Thames Valley Police may well be disclosed, as the result of further FOIA requests, and may then be combined into some form of publicly accessible tabulation.' (Tribunal at paragraph 15).

27. However, for reasons not directly pertinent to this case, the Tribunal went on to find that the likelihood of the prejudice described in point (c) was so low that the exemptions were not engaged.

28. On the basis of the Tribunal's findings in the above cases, and in particular their approach in Bucks Free Press, the Commissioner has considered the following factors when deciding whether the consequences of disclosing the seizure data requested by complainant are sufficient to engage the section 31 exemption:

- Firstly, would disclosure of the requested information set a precedent which would encourage and enable others to obtain similar data for other locations?
- If so, how likely is it that drug seizure statistics for numerous locations in the UK could be combined into a single comparative view for publication?
- If so, does the Commissioner accept the publication or availability of such information would, or would be likely to prejudice HMRC's ability to prevent and detect smugglers?

29. Although the Commissioner believes that it is appropriate to apply the test developed in Bucks Free Press to this case, he notes the difference between the nature of the requested information, and in particular the types of enforcement methods used by the public authorities in each case.

Would disclosure of the requested information for Bristol airport and Avonmouth and Portbury docks set a precedent which would encourage and enable others to obtain similar data for other locations?

30. The Commissioner does accept that disclosure of the requested information in this case will encourage others to request comparative data for other locations. In reaching this conclusion he has been mindful of a number of factors. Firstly, the Commissioner is aware that a number of local newspapers have published stories about the level of drug seizures by HMRC. On 3 March 2006 the Argus, a local Sussex paper, published a story about the levels of drug seizures by HMRC at airports in the region. (<http://archive.theargus.co.uk/2006/3/3/208536.html>). This article was based upon information which was disclosed by HMRC under the Act.
31. The Commissioner has established that a number of other local newspapers from around the UK have also submitted requests for drug seizure information at both a site specific level (e.g. Heathrow airport) and at a county level (e.g. Middlesex). For example, the Norwich Evening News requested information about seizure statistics for Norwich Airport in 2006 but HMRC refused this request (source: <http://www.eveningnews24.co.uk/content/News/story.aspx?brand=ENOnline&category=News&tBrand=enonline&tCategory=news&itemid=NOED28%20Aug%202006%2010%3A49%3A42%3A487>). Therefore, the Commissioner considers it likely that disclosure of the requested information in this case will encourage the media and interested members of the public to submit requests for drug seizure information for their areas.
32. Furthermore, the Commissioner accepts that disclosure of the information in this case is likely to encourage criminals intent on smuggling to make further requests for similar information for other locations. The Commissioner considers that there is substantial evidence to suggest that smuggling gangs spend considerable time and resource on trying to assess the law enforcement capabilities of the authorities. Such methods include monitoring the media and attending court hearings. (See SOCA's publication UK Threat Assessment 2006/7, in particular Chapter five 'Drugs trafficking, primarily class A drugs' for a detailed explanation

of the methods used by criminals to assess the ability of law enforcement agencies).

33. Therefore, the Commissioner believes that if criminals knew they could make requests under the Act in order to be provided with information which they believe may assist them in avoiding detection, the Commissioner considers it likely that they would. Moreover, even if criminals did not make the requests themselves, they would be able to read the reports in the local press. On this point the Commissioner notes that many local and regional newspapers have extensive online archives and therefore criminals interested in gathering information about drug seizures would not have to literally buy copies of the relevant regional newspapers. Rather, they could simply search the internet in order to locate relevant information that had been published in local newspapers in the UK. Clearly, this would aid criminals based anywhere in the world, not just in the UK.
34. In relation to the point of whether disclosure would enable other requestors to obtain similar data for other locations, the Commissioner accepts that there may be particular factors which preclude the disclosure of information for particular locations. However, as HMRC has made clear, it does not consider that in most cases disclosure of the data for a particular location is sufficient to engage the exemption. Rather the prejudice results from the matrix of information which will be built up following numerous disclosures. Therefore, if HMRC received separate requests for each location it is likely that this information would be disclosed.

How likely is it that drug seizure statistics for all locations in the UK could be combined into a single comparative view for publication?

35. The nature of the requested information in this case is not particularly complex. It is simply a breakdown of the levels of, and number of, seizures by HMRC of a variety of illicit goods at three locations over a 12 month period.
36. The Commissioner accepts that given the straightforward numerical nature of the seizure statistics it would be relatively easy to combine these figures into a document which would allow a comparison to be made between the levels of seizures of different goods for a specific location for separate years, or alternatively for different locations for the same year.
37. Furthermore, on a practical level the Commissioner considers that there are a relatively limited number of locations in the UK which smugglers would have to acquire data about in order for it to be useful to them and consequently there be a likelihood of prejudice to HMRC's ability to prevent and detect smugglers. This is because the majority of illegal drugs are believed to enter the UK via ports in the South East of England (SOCA publication UK Threat Assessment 2006/7 at paragraph 5.12). Indeed the SOCA report goes on to be more specific and suggests that the majority of ecstasy consumed in the UK is smuggled either through Harwich, Felixstowe or Dover (paragraph 5.16).

Does the Commissioner accept the publication of such information would, or would be likely to prejudice HMRC's ability to prevent and detect smugglers?

38. As is clear from the above, in this case the Commissioner is effectively being asked to decide what the prejudicial effects of disclosing seizure data for most (if not all) other entry points in the UK would be.
39. Having considered all of the information available to him, the Commissioner accepts that the disclosure of seizure information for all (or a significant majority) of airports and ports would be likely to prejudice HMRC's ability to prevent and detect smugglers. In reaching this conclusion the Commissioner has focused on how the methods which HMRC uses to detect and prevent smugglers from bringing illegal drugs into the UK will be affected by the disclosure of such information. For the reasons alluded to in paragraph 14 the Commissioner cannot describe in detail the methods employed by HMRC therefore the Commissioner is not able to explain in great detail how disclosure of information would prejudice these methods. Nevertheless, the Commissioner believes that he can confirm that his position is that whilst disclosure of seizure statistics may prejudice some of HMRC's detection methods and techniques, he does not accept that disclosure would prejudice all of HMRC's methods.
40. HMRC have publicly stated that they operate an intelligence led mobile deployment strategy rather than a permanent presence at every port and airport in the UK. Therefore, the Commissioner accepts that disclosure of where previous drug seizures have been (along with the size of those seizures and the type of drugs seized) will to some extent reveal the strength of HMRC's intelligence at particular locations. However, in cases where HMRC's intelligence is not linked to a particular location, disclosure of past seizures at particular locations will not necessarily undermine its detection and prevention techniques and methods associated with this intelligence.
41. Therefore, the Commissioner wishes to note that in terms of likelihood of harm, he firmly believes that the danger is one which can be accurately described as likely to occur rather than one that would occur. (See paragraph 13). Clearly for any harm to occur following disclosure of seizure statistics for Bristol airport and Avonmouth and Portbury docks a set of circumstances have to occur, (i.e. further requests have to be made for other locations, these disclosures made, and some analysis of this body of data undertaken) before HMRC's law enforcement abilities are compromised. Whilst the Commissioner accepts that there is a real prospect of these circumstances occurring, given that the potential for harm occurring is dependent on a number of interlinked variables, the likelihood of this harm occurring is most definitely one that is real and significant but one that is by no means certain.
42. On the basis of the above, the Commissioner is satisfied that the exemption contained at section 31(1)(a) is engaged. In reaching this conclusion the Commissioner has taken into account the fact that HMRC has previously disclosed drug seizure statistics with no obvious prejudice to its abilities to prevent and detect smuggling occurring (see the complainant's arguments at paragraph 4). However, for the reasons discussed above the prejudice comes from numerous disclosures over a period of time, rather than isolated disclosures. Therefore, the Commissioner does not accept the complainant's argument that

just because previous disclosures have been made, the information he is interested in should also be disclosed.

43. Section 31 is a qualified exemption and therefore subject to the public interest test under 2(2)(b) of the Act. Section 2(2) states that there is no obligation to disclose information which is covered by a qualified exemption where the public interest, in all circumstances of the case, in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest factors in favour of disclosure

44. The Commissioner acknowledges that there is a strong public interest in HMRC being accountable for its performance and that it is as transparent as possible about how successful it is in apprehending smugglers. Disclosure of the seizure statistics for Bristol airport and Avonmouth and Portbury docks would provide the public with a greater understanding of HMRC's successes in seizing illicit goods at a local level. At present, with the availability of only national statistics, it is difficult for the public to make any assessment as to HMRC's successes on a regional or local level. Disclosure of site specific level statistics would ensure that HMRC was more transparent about how decisions it had taken in relation to its national detection strategy had impacted its performance locally.
45. The Commissioner also recognises that there is a public interest in enabling debate about decisions made by HMRC and allowing the public to challenge these decisions from an informed standpoint. Of direct relevance to this argument is the decision by HMRC in 2003 to introduce a system of mobile team working for customs officers in the South West rather than having a fixed and permanent presence at all locations. The Commissioner is aware that when the decision to introduce this system was first proposed there was considerable public concern as to what the impact of this change would be.
46. In the time that has passed since the introduction of mobile units in 2003 and the date of this request in March 2006, the Commissioner understands that public concern and discussions as to the impact of these changes has continued. The Public and Commercial Services Union has voiced its concern and suggested that the introduction of the mobile working model has led to ports in the South West being exposed. Furthermore, Lord Carlile, the UK's Independent Reviewer of Terrorism Legislation, was concerned that security at regional UK ports and airports was being compromised and that it was 'ludicrous' that mobile customs officers are working outside their home areas. Lord Carlile added that 'If you compare the structure of the Customs and the way they deal with possible terrorism, and the structure of the police, you do actually see that the regionalisation of the police has been very effective. Now of course Customs are involved in this activity, but they aren't there when they may be needed and that's very unsatisfactory'. (Source: <http://news.bbc.co.uk/1/hi/uk/5073314.stm>).
47. The Commissioner accepts that disclosure of the requested information would inform the public debate surrounding these issues. Analysis of these statistics along with those previously disclosed under the Act (see paragraph 4) would allow the public to make a direct comparison between the level of seizures at the three locations identified in this request prior to the reorganisation in 2003 and

after this date. Furthermore, if the statistics showed that since the re-organisation had taken place in 2003 seizures at these locations had remained relatively static, or indeed increased, then disclosure of this fact would be likely to allay public concerns about the decision to re-organise customs officers.

48. The Commissioner also recognises that there is a public interest in bringing to light information which may affect public health and public safety. It could be argued that by disclosure of the requested information would allow the population in the Bristol area to make some assessment as to the levels of drugs in their region. As the Commissioner discusses in paragraph 54 below, it is well established that there is a significant economic and social cost to drug use.

Public interest factors in favour of withholding

49. The Commissioner acknowledges the strength of the public interest arguments in favour of disclosure which are outlined above. However, in this case the Commissioner believes that there are a number of mitigating factors which limit the strength of the arguments outlined in paragraphs 44 to 48.
50. Firstly, with regard to the argument that disclosure of the statistics will allow people in the Bristol area to assess the level of availability, and therefore the risk from, illegal drugs in their region. HMRC has suggested that the nature of supply of illicit goods (including illegal drugs) is that they are not usually supplied at a local level; consequently local drug users are not necessarily supplied by individuals smuggling to order through Bristol airport, or the ports at Avonmouth and Portbury. 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 drugs in the Bristol area.
51. Secondly, with regard to the argument that disclosure of the requested information will inform the debate around the reorganisation of customs resources in the South West, the Commissioner believes that disclosure of this information will be of limited use for the following reasons. Clearly, HMRC's reasoning for re-organising customs introduced in 2003 was to ensure that it can deal more effectively with the threat from smugglers on a national level and that this was best dealt with as having an intelligence led approach rather than a small presence in every port. The Commissioner accepts that to assess the success of this re-organisation by solely analysing the seizure statistics for three locations would not give a full picture as to the success or otherwise of the re-organisation. In order to make an accurate assessment into the effectiveness of this decision the Commissioner believes that similar information for a significant number of locations across the UK would be needed.
53. Thirdly, the Commissioner notes that HMRC have argued that it is subject to regular scrutiny by bodies and individuals such as HM Inspectorate of Constabulary, National Audit Office, the Treasury Select Committee and Lord Carlile and that through this scrutiny the effectiveness of HMRC's strategic decisions is challenged and therefore HMRC is already required to be accountable.

54. It is widely accepted that the use of illegal drugs, particularly class A drugs, has a significant negative effect on UK's society and economy. In particular, it is accepted that the market for heroin and crack cocaine causes high levels of harm in terms of health risks to users and breakdowns in family and other relationships; acquisitive and other low level crime (for example theft and robbery) committed by users to fund their habit; and violence against criminals supplying the drug. Although it is not easy to place a specific amount on the monetary costs to the UK of illegal drug use, the most recent report produced for the Home Office estimated that the overall economic and social cost for Class A drugs in England and Wales in 2003/2004 was around £15.4 billion. (Quoted in the RSA Drugs Commission report 'Drugs – facing facts' at page 86. http://www.rsadrugscommission.org.uk/pdf/RSA_Drugs_Report.pdf). Obviously, the supply of drugs at street level is directly linked to the amount of drugs that are successfully smuggled through UK frontiers.
55. Furthermore, the Commissioner notes that disclosure of this information could prejudice HMRC's ability to prevent and detect the smuggling of many other goods, not just illegal drugs. Organised criminal gangs are known to import a wide variety of illicit commodities including alcohol, tobacco, firearms, vehicles, counterfeit goods, wildlife, gems and people. Therefore in weighing the public interest in disclosure of this information the Commissioner has to consider the impact of disclosure on HMRC's abilities to prevent and detect the smuggling of not just illegal drugs but a wide variety of other goods and the consequences of these goods being brought into the UK.
56. Having considered the public interest arguments for both disclosing and withholding the information, the Commissioner has concluded that in this case the public interest is weighted in favour of not disclosing the requested information. In reaching this conclusion the Commissioner has been particularly persuaded by the strong public interest in HMRC being able to prevent and detect criminals smuggling illicit goods into the UK given the various negative effects on society of the distribution and availability of such goods. The Commissioner also notes that the public interest argument which suggests that disclosure would inform the debate around the decision to re-organise the deployment of customs officers in 2003 is limited because the requested information in this case would only reveal the impact of this decision on three specific locations; to make an accurate assessment into the effectiveness of this decision means that similar information for many more locations across the UK would be needed. However, disclosure of such a body of data is precisely what is likely to harm HMRC's ability to prevent and detect smuggling.
57. The Commissioner is therefore satisfied that the requested information is exempt from disclosure on the basis that disclosure would be likely to prejudice HMRC's ability to prevent or detect crime and that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Decision

58. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

59. The Commissioner requires no steps to be taken.

Right of Appeal

60. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 19th day of December 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 2(1) provides that –

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

- (a) the provision confers absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information

section 1(1)(a) does not apply.”

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 31(1) provides 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,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,

- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

Section 38(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).”