

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 4 April 2008**

**Public Authority:** The Home Office  
**Address:** 4<sup>th</sup> Floor, Seacole Building  
2 Marsham Street  
London  
SW1P 4AS

### Summary

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The complainant requested the names of three former Ministers provided with the use of a government car. The Home Office disclosed the name of one Minister but refused to disclose the other two names under sections 31 and 38 of the Act. The Commissioner investigated and found that the exemptions were not engaged. The Commissioner requires the public authority to disclose the information within 35 calendar days of this notice.

### The Commissioner's Role

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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

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2. The complainant has advised that on 24 May 2006 he made the following request for information to the Home Office:  
  
*"Would you please supply me with:  
(a) the names of the three former Ministers, referred to in the parliamentary answer to the member for Walsall (North) on 16<sup>th</sup> February 2006 (Official Report, column 2412W), who are provided with ministerial cars."*
3. The Home Office responded on 13 June 2006 informing the complainant that it was still applying the public interest test in relation to the exemptions at section 23 and 24 which relate to National Security, section 31 'Law enforcement' and

section 38 'Health and Safety'. The Home Office informed the complainant that it hoped to be in a position to respond fully by 13 July 2006.

4. The Home Office provided a substantive response on 2 August 2006. The Home Office informed the complainant that the information was being withheld under sections 31 and 38 as disclosure would, or would be likely to prejudice the prevention or detection of crime and endanger the health and safety of former Ministers. The Home Office no longer sought to rely on sections 23 and 34. The Home Office found that the public interest in disclosure did not outweigh the public interest in protecting former Ministers who are provided with cars for security reasons.
5. On 7 August 2006 the complainant requested an internal review of the decision to withhold the names of the former Ministers.
6. On 26 October 2006 the Home Office communicated the findings of the internal review to the complainant. The Home Office explained that release of the information would render the former Ministers more vulnerable to attack and would also have the adverse effect of highlighting which former Ministers do not have the protection offered by secure transport. During subsequent correspondence, the name of one of the former Ministers was released, but the Home Office upheld the decision to withhold two of the Ministers' names from the complainant. The Home Office explained that the name of the Minister disclosed, Lord Howe of Aberavon, was released as his transport is provided for reasons other than security - he is provided with a car as a courtesy given his former position of Deputy Prime Minister.

## The Investigation

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### Scope of the case

7. The complainant wrote to the Commissioner on 1 November 2006 to ask the Commissioner to investigate the Home Office's handling of his request for information. The Commissioner's investigation focused on the application of section 31 and 38 to the two withheld names.

### Chronology

8. The Commissioner began his investigation by writing to the Home Office on 28 September 2007 requesting that the Home Office provide him with the names of the two Ministers. The Commissioner also requested that the Home Office explain, in relation to the exemption at section 31 of the Act, how disclosure of the two names would prejudice the prevention or detection of crime; he also asked for an expansion on the public interest arguments considered for and against maintaining this exemption. In relation to the exemption at section 38 of the Act the Commissioner requested that the Home Office review its application to the information. The Commissioner raised a number of points regarding the information and asked the Home Office to comment on the application of the

exemption taking these into consideration. The Commissioner also asked the Home Office to explain in more detail the application of the public interest test in relation to this exemption.

9. The Home Office responded on 1 November 2007 informing the Commissioner that the identities of the former ministers are insignificant to the investigation as the same principles apply regardless of the names of the people. The Home Office also explained that the balance of public interest is not dependant on the names of the personalities involved and that as the information is subject to special and explicitly defined storage and transmission procedures to enact these in light of the above would be unnecessarily laborious.
10. The Home Office explained that the application of sections 31 and 38 was closely related in this case as the consequence of the failure to prevent any crime is the physical harm that would likely result. If one exemption is engaged the Home Office asserted then so must the other and therefore the public interest factors are largely the same for both exemptions. In support of the application of the exemptions the Home Office provided some examples of attacks against Ministers and former Ministers and provided further explanation of their engagement and public interest factors considered. In relation to the disclosed name the Home Office now stated that it was an error for Lord Howe to be named publicly as receiving a government car.
11. The Commissioner responded on 2 November 2007 explaining to the Home Office why it was necessary for the Commissioner to know the names of the former Ministers being withheld. The Commissioner also asked for further information regarding the applicability of the exemptions and more information in relation to the public interest test. In relation to the disclosure of Lord Howe's name in conjunction with the provision of an official car, the Commissioner asked the Home Office to clarify which was correct:
  - if the name had been disclosed as he was not provided with a car on the grounds of security, but as courtesy afforded a former Deputy Prime Minister as claimed in the Internal Review dated 26 October 2006; or
  - if the public disclosure of his name was in error as claimed in the letter of 1 November 2007.
12. The Home Office responded on 21 November 2007 providing the Commissioner with further arguments and explaining why it felt it was not possible to provide the names of the former ministers in the letter. The Home Office did state that it would be happy to provide the information to the Commissioner in a meeting and also explain in more detail the risk factors used to determine if a person requires a government car. The Home Office also confirmed that Lord Howe's name had been disclosed in error as he was provided with a car on the grounds of security.
13. The Commissioner had a meeting with the Home Office on 21 February 2008 to discuss the case in more detail and to obtain further information regarding the application of the exemptions.

## Findings of fact

14. The Freedom of Information request was made after the following parliamentary question:

*“Mr. Winnick: To ask the Secretary of State for Transport how many former Ministers, apart from the Prime Ministers, have official cars provided for their use; from which administrations; and if he will make a statement.*

*Ms. Buck: [holding answer 13 February 2006]: In addition to both former Prime Ministers the GCS provides cars and drivers to three former Ministers, two from Labour administrations and one from a Conservative administration”*

15. At the internal review, the Home Office disclosed to the complainant the name of the Minister from the Conservative administration, Lord Howe, but continued to withhold the other two names under sections 31 and 38 of the Act.

## Procedural Matters

16. The Home Office stated that in this case the application of the exemptions at section 31 and 38 is extremely closely related for the following reason. The consequence of any failure to prevent crime cause by disclosure, in this case an attack, on a former minister, is the physical harm that would likely result. The reverse, is also true that if a former minister is harmed then a crime must have been committed.
17. Consequently, the Home Office provided the same arguments for the application of both exemptions and the public interest test. The Commissioner however, has considered each exemption separately although as a result some arguments may be duplicated.

## Analysis

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### Exemption: Section 38 ‘Health and Safety’

18. Section 38(1) states that information is exempt if its disclosure under the 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.
19. The Home Office explained that as the information pertains to aspects of the security arrangements afforded to the Ministers disclosure would render them vulnerable to attack by identifying their security arrangements, it would also have the adverse effect of clearly highlighting which former Ministers did not have the protection offered by secure transport and thus put them at greater risk.

20. In support of this the Home Office reminded the Commissioner of two instances in which Ministers had been subject to attacks. In 1990 the Conservative MP for Eastbourne Ian Gow was assassinated by an IRA car bomb as he left his home in his own car. Mr Gow had recently resigned as Minister of State at the Treasury in protest at the signing of the Anglo-Irish Agreement; he was a leading opponent of any compromise with Irish republicans. The Home Office stated that this tragic example demonstrates the fact that the risk to a minister's safety, and therefore of a crime being committed, does not diminish when they cease to hold office.
21. The Home Office further explained that Ministers are not only at risk of attack from terrorists but also from individuals campaigning on a wide range of issues. To support this claim the Home Office highlighted the incident in which Margaret Hodge had been handcuffed to a Father for Justice Campaigner in 2004 whilst Children's Minister. The Home Office explained that the same threat can still exist after a Minister leaves office and that it is vital that nothing is ever done which could facilitate physical attacks on former Ministers now or in the future.
22. In relation to the application of the exemption to the specific information requested the Home Office explained that cars provided by the Government Car Service (GCS) provide extra security to their users. However, the provision of a ministerial car will not be the only measure in place to protect them at any one time. Other measures are also employed to facilitate protection when the individual is not in the car. Therefore, it argued, by disclosing the identities of those receiving cars the risk of an attack against them is increased 24 hours a day and not just when travelling. The same applies to those not receiving cars.
23. The Home Office further explained that the disclosure of the relevant names would highlight which former ministers are perceived to be at risk and which are not. The provision of cars to former ministers is kept under review, and their allocation is changed as a result of detailed risk assessments. The Home Office argue that if this information were disclosed it would help those with an inclination or plans to attack former ministers to gauge whether their activities and plans were known about or not and act in ways influenced by this knowledge. The impact on crime prevention would potentially be wide where a group were engaged in, or planning, a wider range of activities as it could also indicate the extent to which their activities were known about in a more general sense. Periodic disclosure would also enable potential attackers to build up a picture of the factors taken into account when assessing risk and the relative weight attached to them; periodic release would also highlight the instances when an individual had had his protection withdrawn as a result of a reduction in perceived risk, this could renew a potential attacker's interest in the person and render them more vulnerable.
24. In a meeting with the Commissioner the Home Office explained the process by which a former Minister is provided with a car: when a Minister leaves office a Risk Management Board will meet and assess, based on a number of factors as well as professional judgement and the security provision needs of former Ministers. These are known as protective security arrangements and are reviewed annually. The Home Office also explained in more detail why the

Ministers in relation to this case had been deemed to require a car as part of their security arrangements.

25. In reaching a decision as to whether section 38 applies to the names of the Ministers the Commissioner has taken the following factors into consideration: Firstly the Commissioner considered the argument presented by the Home Office that provision of a car is not the only security measure taken to protect the individual. The Home Office explained that it would be unlikely that car would be the only provision; they also admitted that disclosure that a person has the use of a car would not reveal what the other security measures were. However, they have argued that because disclosure would reveal that the former Ministers have cars it would enable any planned attack to be carried out with more precision i.e. someone known to have home security is more vulnerable to attack in their car and vice-versa.
26. However, the Commissioner notes that disclosing that a Minister has the use of a car would not explain the level of the security associated with the car or any of the other security measures in place to protect the former Minister. The provision of a car may indicate that an individual has further security arrangements but it does not provide any detail of these arrangements. The Commissioner also considers that if a potential attacker were to plan an attack on a former Minister he or she would research and observe their target and it would identify what security measures are in place.
27. The Commissioner also notes that the reason for provision of a car, as explained by the Home Office, is based on a number of risk factors and a detailed risk assessment, which indicates there is some sort of threat to the Minister requiring the on going extra security provision. However, he is not persuaded that the incremental disclosure of the names, bearing in mind that is already known that they are two former Labour Ministers, increases the likelihood of any attack such that this disclosure would, or would be likely to endanger the health or safety of the individuals
28. The Home Office have also argued that disclosure would also place those former Ministers who do **not** have a government car at greater risk. However, the Commissioner notes that in relation to the particular circumstances of this case there is already a considerable amount of information about the number and identity of the former Ministers with cars in the public domain. It is already known that there are only three Ministers, that two are from Labour administrations and one from Conservative and who the Conservative Minister is.
29. The Commissioner believes it is reasonable to assume that the former Ministers who do not have the use of a car have been assessed and deemed to be at low risk of attack based on the Risk Management Board's assessment. The Commissioner does not consider that confirmation of this fact, given the information already publicly known, would give rise to an increased threat risk from any potential attacker.
30. The Home Office have also argued that periodic disclosure would allow potential attackers to build up a picture of the factors taken into account when assessing

risk. However, the Commissioner notes that disclosure of any information must be considered on a case by case basis and the arguments considered for and against disclosure at one time may be different when a request is made at later date. Therefore, it cannot be assumed that the information will always be disclosed or withheld when requested and that a 'picture' or pattern could therefore be built up.

31. In reaching a decision the Commissioner believes that in the particular circumstances of this case, the information already disclosed to the public reduces the likelihood that further disclosure would increase the risk to those with or without cars. The Commissioner considers that by confirming the small number of former Ministers provided with a car, it has already been highlighted that the huge majority of former Ministers do not have this level of protection. The information already disclosed into the public domain goes further than this and had provided more detailed information about the political parties and the identity of one of the Minister. The Home Office have acknowledged that these disclosures have already to some extent increase the risk of attack on individuals. The Commissioner does not believe that the further disclosure of the additional two names would increase the likelihood of any attack any further. The Commissioner again notes that the Home Office have confirmed that it does not consider there to have been a negative impact from the 'accidental' disclosure of the name of the Conservative Minister.
32. The section 38 exemption applies where disclosure "would" or "would be likely to" endanger the health or safety of an individual. The latter phrase means "more likely than not." For the reasons set out in the paragraphs above, the Commissioner finds that in the specific circumstances of this case, and with considerable weight placed on the information already in the public domain, the exemption is not engaged.

#### **Exemption: Section 31 'Law enforcement'**

31. The Home Office have also stated that the names of the two former Ministers provided with an official car are exempt by virtue of section 31(1) (a) of the Act. Section 31(1) (a) states that information is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
32. The Home Office have argued that:

*"The consequence of any failure to prevent crime caused by disclosure, in this case an attack on a former Minister, is the physical harm which would be likely to result. The reverse is also true that if a former Minister is harmed by any sort of attack, then a crime must have been committed. Consequently we consider that if one exemption is engaged, as we firmly believe is the case, then the other must be as well"*
33. The Commissioner accepts that - using the arguments presented by the Home Office and in the particular circumstances of this case - if disclosure would, or would be likely to endanger the health and safety of the Ministers because of the increased likelihood of an attack, then the logical conclusion would be that

disclosure would also or would also be likely to prejudice the prevention or detection of crime. The Home Office have advanced the same arguments to engage this exemption as the section 38 exemption and have not provided any additional arguments to support the application of section 31.

34. As discussed in paragraphs 20 to 32, the Commissioner does not accept that disclosure in the case would increase the likelihood of any attack on an individual, and therefore the likelihood of any crime being committed is also not increased. Consequently, for the reasons discussed in paragraphs 20 to 32 the Commissioner finds that section 31 is not engaged as he does not consider that disclosure of the information would, or would be likely to prejudice the prevention or detection of crime.

## The Decision

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35. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:

(i) Breached section 1(1) as it failed to provide the requested information because the exemption at section 31 and 38 were not engaged.

36. However, the Commissioner found that the following elements were dealt with in accordance with the requirements of the Act:

(i) Complied with section 17(1) and (2) because the public authority issued an adequate refusal notice within 20 days and advised of the need for further time to consider the public interest test and provided an estimated date.

## Steps Required

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37. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

(i) Disclosure the names of the two former Ministers provided with a government car.

38. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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39. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session



in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Other Matters**

40. The Commissioner notes that the Home Office exceed the time it estimated under section 17(2) for the time needed to consider the public interest test.

## Right of Appeal

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41. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

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 4<sup>th</sup> day of April 2008**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annex

### Law enforcement.

**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 31(2)** provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,

- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

**Section 31(3)** 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, prejudice any of the matters mentioned in subsection (1).”

### **Health and safety.**

**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).”