

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 August 2014

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

#### **Decision (including any steps ordered)**

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1. The complainant requested the number of people detained or arrested from a ferry that arrived in Newcastle from Amsterdam on a specified date. The Home Office refused to disclose this information and cited the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime) and 31(1)(e) (prejudice to the immigration controls).
2. The Commissioner's decision is that these exemptions were cited correctly and so the Home Office was not required to disclose the requested information.

#### **Request and response**

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3. On 11 December 2013 the complainant wrote to the Home Office and requested information in the following terms:

*"I wish to make a foi request. This being, the number of people detained and or arrested from the DFDS ferry from Amsterdam that arrived in Newcastle on Friday 8th November and Saturday 9th November 2013. Please provide the reasons for the arrests and detentions"*

4. The Home Office responded on 3 January 2014. It stated that the request was refused under the exemption provided by section 31(1)(a) (prejudice to the prevention or detection of crime) of the FOIA.

5. The complainant responded on 3 January 2014 and requested an internal review. The Home Office responded with the outcome of the internal review on 22 January 2014. The refusal to disclose the information was upheld and the Home Office now also cited section 31(1)(e) (prejudice to the immigration controls).

### **Scope of the case**

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6. The complainant contacted the Commissioner on 22 January 2014 to complain about the refusal of his information request. At this stage the complainant indicated that he did not agree that the exemptions cited by the Home Office did apply.
7. In correspondence with the ICO the Home Office made a reference to citing section 31(3) in relation to part of the request and neither confirming nor denying whether the information was held. As the Home Office did not state that it was actually now citing section 31(3) or contact the complainant to advise of this, the Commissioner has not considered whether that exemption does apply.

### **Reasons for decision**

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#### **Sections 31(1)(a) and 31(1)(e)**

8. Section 31(1)(a) provides an exemption where the disclosure of information would, or would be likely to, prejudice the prevention or detection of crime. Section 31(1)(e) provides the same in relation to the immigration controls, which the Commissioner's published guidance on this exemption<sup>1</sup> refers to as "*physical immigration controls at points of entry into the United Kingdom*".
9. For these exemptions to be engaged disclosure must be at least likely to prejudice the matters referred to in these sections. These exemptions are qualified by the public interest, which means that if the public interest in maintenance of the exemptions does not outweigh the public interest in disclosure, the information must be disclosed.

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/law-enforcement-foi-section-31.ashx](http://ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/law-enforcement-foi-section-31.ashx)

10. The Home Office has given the same reasoning for the citing of both of these exemptions, so this analysis covers them jointly.
11. As noted above, these exemptions apply where disclosure "*would*" or "*would be likely*" to cause prejudice. In this case the Home Office has specified that its position is that prejudice *would* result through disclosure. The approach of the Commissioner is that he will accept that prejudice *would* occur where that outcome is more probable than not. That is the test that he has applied here.
12. The Home Office acknowledged that disclosure of the specific information in question here would not be likely to be harmful in itself. Instead, its argument concerned prejudice that it believed would result through the combination of this information with other information that may be disclosed in future. It argued that this would enable a picture of deployment of resources at ports to be built up, which would then be of assistance to those seeking to evade the entry controls in place at those ports, and that this would result in prejudice to the matters referred to in sections 31(1)(a) and (e).
13. These types of arguments are sometimes referred to as "mosaic" arguments, where the public authority argues that disclosure of the information in question could be combined with other information to form a "mosaic" of the process that the information relates to. The approach of the Commissioner is to assess the merits of "mosaic" arguments on circumstances of each case and they should not be dismissed automatically.
14. The Commissioner notes first that the reasoning advanced by the Home Office is relevant to the prevention or detection of crime and to the operation of the immigration controls; the processes referred to in sections 31(1)(a) and (e). As to whether the likelihood of this prejudice occurring is more likely than not, the first step is to consider what disclosure of the information in question would reveal.
15. The argument of the Home Office is that disclosure would reveal what resources to prevent smuggling or illegal entry were deployed to Newcastle Ferry Port around the time of the arrival of the ferry specified in the request. Its argument was that if the number of arrests and detentions was low, this would indicate that few resources had been deployed, and a high number of requests or detentions would indicate the opposite.
16. On the issue of other information that could be combined with the information in question to cause a mosaic effect, the Home Office was referring to information that may be disclosed in response to future

similar information requests, which it argued would be difficult to refuse if the information in question here was disclosed.

17. Where mosaic effect arguments are advanced the Commissioner's view is that these will be more convincing where the public authority is referring to other specific information that is already in the public domain, rather than to information that may be disclosed at an indeterminate future time. However, he does not reject entirely arguments based on disclosures to future information requests, so accepts that this element of the Home Office's argument in this case is valid, albeit that it carries less weight than if the Home Office had been able to point to specific information that is already available.
18. In support of its argument, the Home Office referred to a previous case in which the Commissioner found that sections 31(1)(a) and (e) were engaged in relation to operational information about a ferry port<sup>2</sup>. On appeal this decision was upheld by the First-tier Tribunal<sup>3</sup>.
19. The Commissioner's view is that the Home Office has made a valid argument about how a fuller picture of law enforcement efforts on ferries and at ports could be built up through disclosures in response to other similar requests, combined with the response to this request. Whilst he does not accept that the test for *would* prejudice is met, the Commissioner has gone on to consider whether the test for *would be likely* is met, which he generally will do where he has found that the higher test is not met.
20. The test that the Commissioner applies when considering whether prejudice would be likely is that there must be a real and significant likelihood of prejudice occurring, but it is not necessary for this outcome to be more probable than not. Applying that test here, the Commissioner accepts that there is a real and significant likelihood of prejudice relevant to sections 31(1)(a) and 31(1)(e) through the information in question being combined with information disclosed in response to future similar information requests. The mosaic effect picture that would emerge through a number of disclosures could then

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[http://ico.org.uk/~media/documents/decisionnotices/2012/fs\\_50401773.aspx](http://ico.org.uk/~media/documents/decisionnotices/2012/fs_50401773.aspx)

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<http://www.informationtribunal.gov.uk/DBFiles/Decision/i845/20121005%20Decision%20EA20120041.pdf>

be of significant use to those seeking to evade the border entry controls. Increasing the possibility to evade border controls would be likely to prejudice both the prevention and detection of crime, and the operation of the immigration controls. His conclusion is, therefore, that these exemptions are engaged.

21. The next step is to consider the balance of the public interest. In forming a conclusion here the Commissioner has taken into account the general public interest in the transparency of the Home Office, as well as factors that apply in relation to the specific information in question.
22. Covering first arguments in favour of disclosure, the Commissioner recognises that there is public interest in disclosure that would inform about the public about the operation of detention/arrest on a specific ferry. The information would provide some limited insight into the effectiveness of the process and the work of the Home Office related to border security. This is a valid public interest factor in favour of disclosure but the Commissioner finds that it should be given limited weight.
23. Turning to arguments in favour of maintenance of the exemption, having found that the exemptions are engaged as the prejudice predicted by the Home Office is a likely outcome of disclosure, the Commissioner must acknowledge the public interest in avoiding that outcome. Clearly it would not be in the public interest to prejudice the ability of the Home Office to prevent and detect crime, and the operation of the immigration controls. The public interest inherent in the exemptions is a valid factor in favour of maintenance of the exemptions of considerable weight.
24. In conclusion - the Commissioner has recognised that there is valid public interest in disclosure. However, the prejudice to the processes inherent in sections 31(1)(a) and (e) would need to be outweighed by clear and weighty factors in favour of disclosure. In this case the Commissioner does not believe that any such factors exist. His finding is, therefore, that the public interest in the maintenance in each of the section 31(1)(a) and (e) exemptions outweighs the public interest in disclosure. This means that the Home Office was not obliged to disclose the information requested by the complainant.

## Right of appeal

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25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

26. 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.
27. 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 .....**

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**