

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

### **Decision notice**

**Date:** 19 March 2015

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

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

---

1. The complainant requested the response from the Home Office to the recommendation that the qualifying period for the special constable long service medal be reduced to five years. The Home Office refused to disclose this information and cited the exemption provided by section 35(1)(a) (formulation or development of government policy) of the FOIA.
2. The Commissioner's decision is that section 35(1)(a) was cited correctly and so the Home Office was not obliged to disclose this information.

#### **Background**

---

3. The request refers to the recommendation that the qualifying period for the special constable long service medal be reduced from nine years to five. This recommendation was made as part of an independent review of police officer and staff remuneration and terms and conditions that was commissioned by the Home Secretary<sup>1</sup>.

---

<sup>1</sup> <https://www.gov.uk/police-pay-winsor-review>

## Request and response

---

4. On 21 May 2014 the complainant wrote to the Home Office and requested information in the following terms:  
  
*"[In relation to the special constabulary long service medal] can you please provide a copy of the following:*
  - i. Full eligibility criteria for the above medal.*
  - ii. Does the nine year service limit have to be continuous.*
  - iii. Does the nine year service limit have to be with one force or does the time served follow if you transfer.*
  - iv. What is the Home Office response to the recommendation from Tom Winsor to reducing the time limit to five years.*
  - v. If the service limit is reduced to five years would this be retroactive?"*
5. The Home Office responded to this request on 19 June 2014. In response to requests (i) to (iii) it referred the complainant to information in the public domain and, to request (v), it stated that no information was held. It addressed request (iv) by confirming that the information was held but refusing to disclose it under the exemption provided by section 35(1)(a) (formulation or development of government policy) of the FOIA.
6. The complainant responded on 19 June 2014 and requested an internal review in relation to the citing of section 35(1)(a) for request (iv). The Home Office responded with the outcome of the review on 8 September 2014 and concluded that the section 35(1)(a) exemption had been cited correctly.

## Scope of the case

---

7. The complainant contacted the Commissioner on 31 August 2014 to complain at that stage about the failure by the Home Office to complete the internal review, as well as about the refusal of part (iv) of the request under section 35(1)(a). After receiving the outcome of the internal review the complainant contacted the ICO again and indicated that he wished to continue with this case in relation to the citing of section 35(1)(a).

## Reasons for decision

---

### Section 35

8. Section 35(1)(a) provides an exemption for information that relates to the formulation or development of government policy. Consideration of this exemption involves two stages. First, the exemption must be engaged as the information in question falls within the class described in this section. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
9. As to whether this exemption is engaged, the question here is whether the information in question relates to the formulation or development of government policy. On this point the Home Office explained that the issue of financial and other rewards for special constables was considered as a part of the review referred to above at paragraph 3. It confirmed that one of the recommendations of that review was that the qualifying period for the special constable long service medal should be reduced to five years.
10. The Home Office explained that it alone does not have the power to make this recommended change. Instead that process would involve several government departments agreeing to make a recommendation to the Honours and Decoration Committee, which would then need to implement the recommendation by altering the terms of the 1919 Royal Warrant that instituted the special constabulary long service medal.
11. The Commissioner accepts that the process of deciding whether to take forward this recommendation of the policing review did constitute the making of government policy. A possible counterargument to this would be that the policing review was the formulation and development stage and that this process was completed with the making of recommendations. As mentioned previously, however, the review was independent so did not itself formulate government policy; the government policy formulation process began with the recommendation of the review, rather than ending there.
12. The Commissioner also notes that this process involved several government departments, which is further evidence that this process was the making of *government* policy, rather than the implementation of an existing policy by a single department, namely the Home Office.
13. The information in question is a document provided to the Honours and Decoration Committee that addresses the recommendation of the policing review. Clearly this document relates to that recommendation

and so, as the Commissioner has accepted that the process of addressing that recommendation constituted the formulation and development of government policy, he concludes that this document engages the exemption provided by section 35(1)(a) of the FOIA.

14. Having found that the exemption is engaged, the next step is to consider the balance of the public interest. Section 35(1)(a) is a qualified exemption, so the information must nevertheless be disclosed if the public interest in maintaining the exemption does not outweigh that in disclosure. In forming a conclusion on the public interest balance in this case, the Commissioner has taken into account the general public interest in the transparency and openness of the Home Office, as well as factors that apply in relation to the specific information in question.
15. Covering first arguments in favour of maintenance of the exemption, when considering the balance of the public interest in relation to section 35(1)(a) the Commissioner will generally always consider it relevant to take into account the public interest in preserving a degree of confidentiality in the policy making process. This is due to the possibility of harm to the quality of that process if those involved were not confident that their contributions would remain confidential.
16. The Commissioner recognises that the argument concerning the preservation of a space within which to carry out the policy making process is, in general, valid on the grounds that this will assist in the open discussion of all policy options, including those that may be considered politically unpalatable. However, the weight that this argument carries in each case will vary, depending on the circumstances.
17. The policy making in this case remained current at the time of the request, as at that time the recommendation was before the Honours and Decoration Committee for consideration. This generally means that there is significant weight in favour of maintaining the exemption due to the public interest in protecting the policy making process to which the information relates.
18. It is in the public interest to avoid harming the policy making process. More specifically, the Commissioner has also in a number of previous cases recognised that it is in the public interest to maintain trust and confidence in the honours system and this is also a valid public interest in favour of maintaining the exemption in this case.
19. The Commissioner is also of the view, however, that the subject matter and content of this information lessens the weight of the public interest in favour of maintenance of the exemption. The qualifying period for the special constable long service medal is a relatively minor area of

government policy. As a result, the Commissioner's view is that, whilst the need to preserve a safe space within which to carry out the policy making process remains a valid factor in favour of maintenance of the exemption, the weight that this factor carries is not as great as it would be if the withheld information related to a major government policy initiative.

20. The Home Office argued that it was necessary to withhold the information in question due to the risk of harm to relations between the government departments involved as a result of what it believed would be premature disclosure of this information. The Commissioner accepts that such an outcome would be counter to the public interest if it would harm good government, but in his opinion the extent of the likely harm in this case, given the nature of the issue, is likely to be limited.
21. As covered above, the process of consulting with other departments was already complete at the time of the request and the content of the information gives no indication as to the views of individual departments. The Home Office has also failed to provide any evidence in support of this argument. For these reasons, the view of the Commissioner is that this argument carries little weight as a factor in favour of maintenance of the exemption.
22. The final argument from the Home Office concerned the passage of time since the information in question was recorded and that no decision had been made during that time. The Home Office argued that it was in the public interest to maintain the exemption as disclosure may lead to misunderstandings about why this process is taking time, when the actual reason for this is that processes of this kind are often lengthy.
23. The view of the Commissioner, however, is that any misunderstanding could be resolved by explaining the situation and so he does not regard this as a valid public interest argument in favour of maintenance of the exemption.
24. Turning to factors in favour of disclosure, the Commissioner believes that there is a valid public interest in understanding the steps taken by the Government in response to the policing review, which extends to the information in question here. This is a valid public interest factor in favour of disclosure of the information.
25. However, as mentioned above, the information in question concerns a relatively minor area of government policy. Whilst this was covered above as a factor that reduced the weight of the public interest in the maintenance of the exemption, this can also be cited as a factor that reduces the weight of the public interest in disclosure. The weight of the public interest in favour of disclosure of this information is clearly less

than would be the case for information that relates to a major government policy.

26. Whilst the Commissioner has not found any particularly weighty public interest factors on either side in this case, his view is that the public interest in favour of maintenance of the exemption marginally outweighs that in disclosure, given the general need to protect an ongoing policy-making process unless the subject-matter of the withheld information is such that there is a significant public interest in its disclosure.
27. As in this case the subject-matter of the information means that the public interest in disclosure is not significant, the conclusion of the Commissioner is that the public interest in the maintenance of the exemption outweighs the public interest in disclosure. The Home Office was not, therefore, obliged to disclose the requested information.

## Right of appeal

---

28. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

29. 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.
30. 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 .....**

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