

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

### **Decision notice**

**Date:** 1 December 2015

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

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

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1. The complainant requested details of samples provided to the Forensic Early Warning System from the Glastonbury Festival. The Home Office refused to disclose this information and cited the exemption provided by section 31(1)(a) (prejudice to the prevention or detection of crime) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 31(1)(a) correctly so it was not obliged to disclose this information. However, the Commissioner also finds that the Home Office stated incorrectly that all of the requested information was held and, in so doing, breached section 1(1)(a) of the FOIA. It is now required to respond to the complainant stating accurately which of the requested information is held.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Write to the complainant setting out accurately which of the requested information is held.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 15 April 2015, the complainant wrote to the Home Office and requested information in the following terms:

*"In the document Annual Report on the Home Office Forensic Early Warning System (FEWS) you state in table 4 that there were 841 samples taken at festivals and analysed in the 2013/14 financial year.*

*In relation to those 841 samples please state (i) how many of these were collected at Glastonbury 2013, and of those how many were (ii) seized from festival goers and (iii) how many were deposited in amnesty bins?*

*Of the samples taken at Glastonbury 2013 how many contained (i) class A drugs, (ii) class B drugs and (iii) class C drugs. Please provide a breakdown of the type of drugs found within each category.*

*Of the samples taken at Glastonbury 2013 how many contained (i) controlled psychoactive substances and (ii) non controlled psychoactive substances. Please provide a breakdown of the names of the five most commonly occurring drugs in each category."*

6. The Home Office responded on 14 May 2015. It refused to confirm or deny whether the requested information was held and cited the exemptions provided by sections 31, 35 and 43. No subsections from sections 31 and 35 were specified, and the incorrect subsection from section 43 was cited.
7. The complainant responded on 5 June 2015 and requested an internal review. The Home Office responded with the outcome of the internal review on 29 July 2015. The conclusion of the review was that it was incorrect to refuse to confirm whether the requested information was held and the Home Office now confirmed that it was held. However, it refused to disclose this information and cited the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime), 31(1)(b) (prejudice to the apprehension or prosecution of offenders) and 35(1)(a) (information relating to the formulation of government policy).

## Scope of the case

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8. The complainant contacted the Commissioner on 18 August 2015 to complain about the refusal of his information request. The complainant stated that he did not agree that the requested information was exempt

and argued that a disclosure of related information in response to a Parliamentary question<sup>1</sup> weakened the position of the Home Office.

9. In correspondence with the ICO, the Home Office stated that it did not hold some of the information specified in the request. The Home Office did not refer to having contacted the complainant to advise of this change in its position. The Commissioner assumes that it did not contact the complainant about this point and this issue is covered in the analysis below. The analysis on section 31(1)(a) relates to the information that the Home Office does hold.

## **Reasons for decision**

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### **Section 1**

10. Section 1(1)(a) of the FOIA requires a public authority to confirm or deny whether it holds information that has been requested. Clearly this requires a public authority to state accurately whether it holds the requested information.
11. In this case, the internal review response confirmed that the requested information was held. As noted above, however, in correspondence with the ICO, the Home Office stated that some of the requested information was not held.
12. In indicating incorrectly to the complainant that all the information he requested was held, the Home Office breached section 1(1)(a) of the FOIA. At paragraph 3 above, the Home Office is now required to write to the complainant setting out accurately which of the requested information is held.

### **Section 31**

13. The Home Office cited the exemption provided by section 31(1)(a) of the FOIA. This section provides an exemption for information the disclosure of which would, or would be likely to, prejudice the prevention or detection of crime. Consideration of this exemption involves two stages. First, the exemption must be engaged as prejudice relevant to the exemption would be at least likely to result. Secondly, this exemption is qualified by the public interest, which means that the

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<sup>1</sup> <http://www.theyworkforyou.com/wrans/?id=2013-07-05c.163612.h&s=%22glastonbury%22+section%3Awrans>

information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

14. Covering first whether the exemption is engaged, the argument of the Home Office concerns the willingness of third parties to supply information to it. It referred to the work of the Forensic Early Warning System (FEWS)<sup>2</sup>, which exists to identify new psychoactive substances soon after they first become available in order that prompt action can be taken to control harmful substances. The Home Office argued that disclosure of the information in question in this case would result in jeopardising the working relationship between FEWS and Glastonbury and other festivals.
15. The Home Office stated that FEWS relied on the permission of Glastonbury and other festivals to collect samples; festivals are not compelled to allow this. The Home Office believed that Glastonbury and other festivals would object to the publication of information relating to individual, identified festivals and provided the following statement from Glastonbury Festival Limited (GFL) in support of this argument:

*"Any disclosure may result in GFL being less willing to allow agencies / bodies to conduct research work at the festival if the confidentiality of such work with various providers is to be made public via such routes as FOI requests.*

*GFL believes that any such work conducted at the festival was granted as the data was promised to be kept non-specific and non-identifiable. GFL allow the Police and Home Office access to the sample material on the basis that it would not be traceable to individuals nor generally disclosed, other than possibly in a very general sense that materials XYZ were being used at festivals in the UK, and not that they were found / used at the Glastonbury Festival. GFL don't object to the disclosure of ALL festival data obtained in the UK, as long as individual sites are not named or cross-referred to in data, that way they can reveal a national picture for a given year, but not event-specific."*

16. Whilst the comments relating to identifying individuals are not relevant – the Commissioner does not believe that it would be possible to link the requested information to any individual and the Home Office has not argued that this would be possible – the Commissioner notes the

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/461333/1280\\_EL\\_FEWS\\_Annual\\_Report\\_2015\\_WEB.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461333/1280_EL_FEWS_Annual_Report_2015_WEB.pdf)

objection to publication of information relating specifically and only to the Glastonbury Festival.

17. The Home Office referred to a table published in the 2014 FEWS annual report<sup>3</sup> as relevant on two counts. First, it stated that this shows that FEWS also collects information on controlled substances – not only new psychoactive substances – and that if it no longer collected this information this would have a detrimental effect on prevention and detection of crime relating to such substances. Secondly, it referred to this table showing that festivals are the largest source of samples collected by FEWS.
18. The Commissioner accepts the premise of the Home Office argument; he agrees that disclosure of the information in question would make Glastonbury Festival, and possibly other festivals, less willing to cooperate with the work of FEWS. He also accepts that this argument is relevant to section 31(1)(a) as harming the work of FEWS would have a prejudicial effect on the prevention of crime.
19. The next step is to consider whether the likelihood of that prejudice occurring is sufficiently high for the Commissioner to conclude that this exemption is engaged. The Home Office argued that prejudice in this case *would* occur, rather than *would be likely* to occur. In order for the Commissioner to accept that prejudice *would* occur, it must be a more likely outcome than not. If he finds that test is not met, he will usually go on to consider whether the test for *would be likely* to occur is met. That test is that there must be a real and significant likelihood of prejudice, but it is not necessary for it to be more likely than not.
20. At this point it is necessary to address the argument advanced by the complainant that similar information to that requested in this case had been disclosed into the public domain previously via a response to a Parliamentary question. The Commissioner notes, however, that that response included significantly less detail than has been requested by the complainant and that it included no data for 2013; the year specified in the request. Therefore, the Commissioner does not agree that this earlier disclosure precludes section 31(1)(a) from being engaged in this case.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/344551/2014-08-12\\_-\\_FEWS\\_Annual\\_Report\\_Aug\\_2014\\_-\\_Final\\_\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344551/2014-08-12_-_FEWS_Annual_Report_Aug_2014_-_Final__2_.pdf) (page 7)

21. The Commissioner notes that it appears that the primary role of FEWS is not crime prevention per se; it is the identification of new psychoactive substances that may later be classified as controlled substances. Whilst the Commissioner has accepted that section 31(1)(a) is relevant as the work of FEWS can also relate to substances that are already controlled and the distribution of which is a crime, that this is not the primary role of FEWS the Commissioner regards as relevant to the likelihood of prejudice. As the work of FEWS is not primarily crime prevention, the Commissioner does not accept that disrupting its work would be more probable than not to result in prejudice relevant to section 31(1)(a). The test for *would* prejudice is not, therefore, met.
22. Having found that the higher test is not met, the Commissioner has gone on to consider whether the test for *would be likely* to prejudice is met. The Commissioner has taken into account here that the work of FEWS does to some extent concern already controlled substances and the obvious importance to its work of cooperation by Glastonbury Festival, and other festivals, given that they are the source of the majority of samples. For these reasons, the Commissioner finds that disruption to the work of FEWS would result in a real and significant likelihood of prejudice to the prevention of crime. The exemption provided by section 31(1)(a) was, therefore, engaged.
23. Having found that the exemption is engaged, the next step is to consider the balance of the public interest. In forming a conclusion on the balance of the public interest, the Commissioner has taken into account the general public interest in the openness of the Home Office, as well as the specific factors that apply in relation to the information in question.
24. Covering first factors in favour of disclosure, the Commissioner recognises that there is valid public interest in information relating to the work of FEWS. Disclosure of the information in question would provide a further insight into the detail of the work carried out by FEWS, which is undertaken with public funds, than is currently made publicly available. However, the Commissioner notes that a significant amount of information about the work of FEWS is currently made available through its publication of annual reports<sup>4</sup>. This means that whilst the public interest in the detail requested by the complainant is a valid factor in favour of disclosure of this information, this public interest is less acute

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<sup>4</sup> <https://www.gov.uk/government/publications/forensic-early-warning-system-fews-annual-report>

than it would otherwise have been had there not been significant information already in the public domain.

25. Turning to factors in favour of maintenance of the exemption, the most significant factor here is the public interest in preserving the ability of FEWS to carry out its work effectively. That the Government, through the work of FEWS, is able to identify and take appropriate action in relation to new psychoactive substances is clearly in the public interest and so, therefore, is avoiding likely prejudice to that ability. The Commissioner considers this a valid factor in favour of maintenance of the exemption of significant weight.
26. In conclusion, the Commissioner has recognised that the subject matter of the requested information means that it is of valid public interest. However, having found that the exemption is engaged, the Commissioner must take into account the public interest in avoiding the outcome that he has accepted would be likely to occur. The Commissioner's view is that the public interest in avoiding that prejudice is the weightiest factor here and so he finds 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

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27. 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>

28. 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.
29. 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 .....**

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**