

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2017

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

Decision (including any steps ordered)

1. The complainant requested the reports made by the managers of Yarl's Wood Immigration Removal Centre (IRC) about the conditions under which certain detainees were held for the month of March 2014. The Home Office provided extracts giving some information from the relevant reports but declined to provide the complete reports in full.
2. The Commissioner's decision is that the Home Office has applied the section 31(1) FOIA (law enforcement) exemption correctly. In the light of her findings in relation to section 31 FOIA, the Commissioner did not proceed to consider application by the Home Office of the section 40(2) FOIA (personal information) exemption.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 7 December 2015, and following earlier correspondence, the complainant wrote to the Home Office (HO) and requested information in the following terms:

1. Assuming the data tables and key sent to me in Response 1) were not already in your system in the exact form in which they were sent to me, but were compiled by one of your information officers based on

other original documentation, I would like to see this original documentation.

2. Given that each centre manager is required to send monthly reports which contain details concerning detainees held under Rule 40 and Rule 42, I am assuming that the officer who compiled Response 1 based their response on these reports. I am therefore requesting to see these reports, and/or any other reports or documentation that the officer who compiled Response 1 based its content on. In particular I would like to see the report made by the managers of Yarl's Wood [an Immigration Removal Centre (IRC)] for the month of March 2014.

3. If the document you sent to me in Response 1 was not compiled by one of your officers but was an exact copy of what was already in your system, I would like to see any and all of the information on which you are basing your claim that Response 2) is correct and Response 1) is incorrect.

5. HO said, by way of background, that Rule 40 refers to removal from association, where it appears necessary in the interests of security or safety that a detained person should not associate with other detained persons (for example, following a fight between detainees). Rule 42 is temporary confinement, which is more serious and is where a refractory or violent detained person is confined temporarily in special accommodation. HO said that information about detainees held under Rule 40 and Rule 42 was contained in a weekly statistical sheet for Detention Services; there were five weekly sheets for Yarl's Wood for March 2014. HO added that in the Rule 40/Rule 42 tab the rubric said 'days' but the actual record showed hours and minutes.
6. After a considerable delay, and following intervention by the Commissioner, HO responded on 11 August 2016. HO said that the full reports requested were, in its view, exempt from disclosure under the exemptions contained in section 31(1)(f) and section 40(2) FOIA. On 16 August 2016 HO waived its right to conduct a further review enabling the complainant to appeal to the Information Commissioner immediately.
7. During the Commissioner's investigation, and as part of an offer of informal resolution, HO disclosed some further information but continued to rely on the section 31(1)(f) FOIA exemption to withhold the remainder of the information requested.
8. HO told the complainant that extracts it had provided to her from its Rule 40 and 42 records for Yarl's Wood IRC had been expressed incorrectly and that the figures provided had been expressed in hours and minutes not in days as HO had initially told her. The complainant did

not accept the explanation provided by HO nor that its Rule 40 and 42 records were expressed in hours and not days.

Scope of the case

9. On 28 November 2016, in an effort to resolve the matter informally during the Commissioner's investigation, HO told the complainant again that the full reports requested were exempt from disclosure under the section 31(1)(f) FOIA exemption. However, HO said it could disclose the information in the Rule 40/Rule 42 tabs from the five weekly reports for Yarl's Wood for March 2014 and did so.
10. On 12 December 2016 the complainant told the Commissioner that she was not content to accept informal resolution on the basis of the further HO disclosures. She did not make any further representations or give reasons for refusing to accept informal resolution.
11. HO explained that Part 1 of the request assumed that *'the data tables and key sent to me in Response 1) were not already in your system in the exact form in which they were sent to me'*. HO confirmed, and the Commissioner accepted, that the information it had provided to the complainant had been provided in the exact form in which it was held so that the premise for Part 1 of the request did not arise. HO added, in relation to part 3 of the request, that the information it held consisted of extracts from two emails which had been provided to the complainant so that this part of the request had been satisfied.
12. The Commissioner therefore considered part 2 of the request, for the five weekly sheets for Yarl's Wood IRC for the month of March 2014 and HO's application of the section 31(1)(f) FOIA exemption to the still undisclosed parts of the full reports requested ("the full reports"). She reviewed the withheld information and has had regard for representations from HO and representations to HO by the complainant.
13. The Commissioner also considered the issue raised by the complainant about the units in which the records were expressed, ie whether the detentions reported were measured in hours or in days.
14. In the light of her findings in relation to section 31(1) FOIA and the full reports, the Commissioner did not proceed to consider application by HO of the section 40(2) FOIA exemption.

Reasons for decision

Section 31 – law enforcement

15. Section 31(1)(f) FOIA provides an exemption where the disclosure of information would, or would be likely to, prejudice the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.
16. For this exemption to be engaged, disclosure must be at least likely to prejudice the security and good order of these institutions. The exemption is qualified by the public interest, which means that if the public interest in maintenance of the exemption does not outweigh the public interest in disclosure, the information must be disclosed.
17. The exemption applies where disclosure “*would*” or “*would be likely*” to cause prejudice. In this case HO said that prejudice *would* result through disclosure. The approach of the Commissioner is that she will accept that prejudice *would* occur where that outcome is more probable than not. That is the test that she has applied here.
18. The complainant said that it was not apparent to her that disclosure of the requested information would prejudice maintenance of order and security in IRCs. If the information demonstrated that HO had been compliant with the law, it ought not to have any negative effect on the maintenance of order and security.
19. HO said that the full reports contained information about all aspects of security including assaults, actual and attempted escapes, self-harm, tool loss and use of force. Disclosures under FOIA would be made to the world at large, potentially including detainees themselves. Disclosure would prejudice the maintenance of security and good order because it would provide information about security incidents and the response to them. This information would enable the construction of a picture of possible areas of vulnerability in security arrangements in particular IRCs and could point to possible ways to circumvent them.
20. The Commissioner has reviewed the full reports and accepted the HO evidence that, if that information were to be disclosed routinely, then prejudice to the maintenance of security and good order in this and other IRCs could result and that the exemption was engaged.

Balance of the public interest

21. The section 31(1)(f) FOIA exemption is qualified and the Commissioner considered whether or not the the balance of the public interest favoured maintaining the exemption.
22. The complainant said that the balance of the public interest favoured disclosure because there was plausible suspicion of wrongdoing in that

HO appeared not to have known whether it was isolating detainees for hours or days at a time. She said this indicated to her that HO did not concern itself with ensuring that it was compliant with the law, and that it may well not have complied with the law. Release of the full reports would clarify this. The complainant added that disclosure would illustrate and preserve procedural fairness and mean that justice was seen to be done. It would also reveal or prevent misconduct or a miscarriage of justice.

23. The complainant was concerned by the correction HO made to the information first provided to her that the units in which the information had been expressed were days not hours. HO said that the key to the data initially provided to her from the weekly Rule 40/Rule 42 sheets had been incorrect. The position had been corrected in the later HO response. HO told both the complainant and the Commissioner that it had checked the position with its service provider at Yarl's Wood IRC (who had provided the original data) and had realised that there had been an error. However, the error had not been with the information provided but with the rubric on the spreadsheet. This error had been corrected by HO. The Commissioner has seen the correspondence between HO and the service provider and received further assurances from HO on the issue. In the absence of any conflicting information, and she has seen none, the Commissioner is satisfied, on a balance of probabilities, that the information as provided by HO to the complainant in its final form is correct.
24. For its part, HO accepted that there was a public interest in being satisfied that IRC security arrangements were adequate and that detainees were treated properly. However, HO said that this interest was met by the routine inspections by HM Inspectorate of Prisons and by the Independent Monitoring Boards at each centre. The Monitoring Boards submitted an annual report to the Immigration Minister but could raise specific issues at any time.
25. HO said that it had disclosed the extracted Rule 40/Rule 42 information and that therefore the public interest in disclosure of the full detail of the weekly reports was limited. The full reports were internal management documents used by HO for the purpose of monitoring and reporting on security incidents in IRCs.
26. In her decision the Commissioner had regard for the fact that HO assessed the likelihood of prejudice occurring from disclosing to the public the full reports at the higher level of 'would' prejudice the security and good order of IRCs.
27. The Commissioner has noted the need for arrangements to be in place to ensure proper accountability and transparency by HO and its

contractor for the treatment of detainees. However, she accepted that other measures were already in place to provide the public with assurance about the treatment of detainees. In the light of that, she considered that publication of the full reports would not add anything of significance to the information that HO had already disclosed. Accordingly the Commissioner decided that the balance of the public interest favoured maintaining the section 31(1)(f) FOIA exemption to withhold the full reports.

28. In the light of her decision on the section 31 FOIA exemption, the Commissioner did not consider HO's additional reliance on the section 40(2) FOIA exemption (the application of which the complainant had previously said she was willing to accept).

Right of appeal

29. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Jon Manners
Group Manager

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