IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS)

UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

Case No. EA/2011/0186

GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

The Information Commissioner's
Decision Notice No: FS50368290
Dated: 27 July 2011

Appellant: William Summers

First Respondent: Information Commissioner

Second Respondent: The Commissioner of the Police for the Metropolis

Heard at: The Royal Courts of Justice, London 17 and 18 January 2012

Before

David Marks QC
Tribunal Judge

Lay Members

Jean Nelson

Henry Fitzhugh

Counsel for the Appellant: Anna Morris
Counsel for the First Respondent: Tom Cross
Counsel for the Second Respondent: Robin Hopkins

Subject matter: FOIA ss 24, 31 and 38

Cases: *Ofcom v IC* (Case C-71/10 (ECJ)
Kalman v IC [2011] 1 Info LR 664
Secretary of State for Home Office v Rehman [2003] 1 AC 153
Hogan v IC [2011] 1 Info LR 588
PETA v IC [2011] 1 Info LR 908
BUAV v IC and Newcastle University (EA/2010/0064)

DECISION

The Tribunal upholds the decision of the Information Commissioner (the Commissioner) in the Commissioner's Decision Notice dated 27 July 2011 Reference No. FS50368296 and dismisses the Appellant's appeal.

REASONS FOR DECISION

Background

1. The Appellant, Mr Summers made a written request on 5 September 2010 for information regarding what he called the total amount spent by the Metropolitan Police's Royal Protection Unit which is referred to as SO14 for the financial year April 2009 to March 2010.

2. SO14's primary responsibilities are the protection of the Royal Family both nationally and abroad and the protection of Royal residences in London, Windsor and Scotland.

3. In particular the public authority being the 2nd Respondent refused the request relying upon a number of exemptions in the Freedom of Information Act 2000 (FOIA).

4. The first was section 31(1)(a) which deals with the protection and detection of crime and which is a qualified exemption. The second was section 24(1) which deals with national security and which is also a qualified exemption. Third reliance was placed on section 38(1)(b) which again is a qualified exemption.

5. In the Decision Notice the Commissioner found that section 24(1) was engaged and he determined that the public interest lay in favour of the maintenance of the exemption. The other exemptions which have previously been relied upon were therefore not considered. During the course of this appeal the argument concerned almost exclusively the application of section 24(1) but also addressed in briefer terms the other two exemptions. Consequently this judgment will deal with those exemptions as well.

6. In the circumstances set out above the public authority alleges that should such be the case the public interest addressed and served by each of the three exemptions should be regarded in accordance with the judgment of the European Court of Justice in *OFCOM v Information Commissioner* (Case C-71/10) and be aggregated in the sense employed in that judgment. Although the latter decision involved the Environmental Information Regulations 2004 the public authority alleges that no different approach should be taken with regard to FOIA. In any event a cumulative assessment of the public interests in all three exemptions it is said militates firmly in favour of the maintenance of all three exemptions. This issue will be addressed in a separate paragraph below.

The law

7. Section 24(1) of FOIA provides:-

> "Information which does not fall under section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security".

Section 23 which is not material for present purposes exempts information if it was supplied to a public authority by a list of specified bodies set out in section 23(3) none of which relate to the present appeal.

8. As for section 24(1) it has been held in another Tribunal decision that the information need not itself relate to national security: rather the exemption must be "required" for national security purposes. See *Kalman v IC and Department for Transport* [2011] 1 Info LR 664 particularly at paragraph 33. Moreover, the *Kalman* decision confirmed that the requisite threat to national security need not be direct or in any way immediate for the exemption to be engaged. See ibid para 33 and see also *Burt v IC and MoD* (EA/2011/004) especially at para 40. Both decisions in that regard reflect the well known approach taken by the House of Lords in *Secretary of State for the Home Department v Rehman* [2001] UK HL 47; [2003] 1 AC 153 in particular at 182 C-F. In the *Rehman* case the House of Lords emphasised that "national security" means "the security of the United Kingdom and its people", that national security interests are not limited to an action or actions by an individual which could be said to be "targeted at" the United Kingdom or against its system of government or its people and that the protection in particular of the constitutional systems and organs of the state and government are just as much part of the national security as military defence considerations.

9. The qualified exemption set out in section 31(1)(a)(b) can be set out as follows, namely:

"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 of or detection of crime,

(b) the apprehension or prosecution of offenders ..."

The public authority in this appeal claims that what has been called the relevant threshold it had to meet in this case is "would be likely to" rather than "would". On that basis it is well established in other Tribunal decisions that the task is first to identify the applicable interest or interests within the exemption and then consider the extent and

nature of the prejudice involved which as it has been said must be "real, actual or of substance". See in particular *Hogan v IC and Oxford City Council* [2011] 1 Info LR 588 particularly at paragraphs 29 and 30.

10. The third exemption relied on is section 38(1)(b) which as indicated above is also a qualified one and which provides that:

> "(1) Information is exempt information if its disclosure under this Act would, or would be likely to -
>
> ***
>
> (b) endanger the safety of an individual ..."

In the present case the public authority again relies upon the threshold reflected in the expression "would be likely to". It has been held in another Tribunal decision that "endanger" means same as "prejudice" and that similar principles apply. See *PETA v IC and University of Oxford* [2011] 1 Info LR 906 particularly at paragraphs 29 and 30.

11. The above principles will be revisited in greater depth when the Tribunal turns to consider the arguments deployed in this appeal.

Factual background

12. As indicated above, by the written request referred to earlier and dated 5 September 2010 the Appellant asked the public authority the following question, namely: "What is the total sum of the SO14 (Protection Command) Unit of the Metropolitan Police?" On 14 April 2011 during the time that the public authority was looking into the request, the Appellant again wrote to the public authority and rephrased his request in the following terms, namely "the total amount spent by SO14 for the financial year April 2009-March 2010".

13. On 30 September 2010 the public authority issued a refusal notice invoking reliance on the three exemptions which have been referred to above. The public authority maintained that the public interest in

maintaining the exemptions outweighed the public interest in disclosure. The public authority advanced five principal arguments.

14. First it claimed that to disclose the information sought, when put together with other information in the public domain potentially comprised the integrity of related security arrangements including security involving the Royal family. This feature is often referred to as the "mosaic effect" of disclosure" (the "chilling effect" is something different).

15. Second, and as a reflection of principles referred to and drawn from the *Kalman* decision, a threat to the Royal Family could be properly be regarded as a threat to the state itself. In particular attention was drawn to the attendant risk that represented not only a potential threat of an attack on the Royal Family but also on those who visited Royal residences.

16. Thirdly, and in relation to the first two arguments, the nature of the information sought would give those interested in breaching the security involved valuable factual information.

17. Fourth, it is a long standing policy of the public authority in conjunction with the Home Office and other police authorities not to disclose this type of information.

18. Fifth, although the public authority accepted that there was a degree of public interest in the activities and operations of SO14 and the related entities within the Police Service being accountable for expenditure which it and they incur, such an interest was clearly outweighed by the factors inherent in the earlier arguments in particular those set out in the first, second and third arguments.

19. On 30 October 2010 the Appellants sought a review of the public authority's initial decision. By a letter dated 9 December 2010 the public authority formally confirmed its earlier decision.

20. On 4 January 2011 the Appellant complained to the Commissioner. He maintained that in reality knowledge of details of the relevant expenditure could not assist anyone in planning an attack. Moreover, he claimed that the House of Commons had already disclosed similar information about its own protection costs thereby providing a precedent in relation to the information sought in the present case.

The Decision Notice

21. In determining that the public interest balancing test required by section 24(1) militated in favour of the maintenance of the exception, the Commissioner pointed to a number of relevant considerations.

22. First, as a reflection of the main contentions advanced by the public authority safeguarding the Royal Family and the Royal residences lay at the heart of safeguarding national security.

23. Second, the provision of financial information of the type sought constituted a powerful source of intelligence in particular when attached to or compared with the known overall spending requirements and other information regarding SO14 and police forces in general.

24. Third, in the light of this last consideration, maintenance of the exemption was in consequence reasonably necessary for the purpose of safeguarding national security.

25. Fourth, again by way of echoing the written contentions made by the public authority already referred to, even though disclosure might be justified on the grounds of accountability, this was outweighed by the public interest considerations set out in the above three arguments.

The Notice of Appeal

26. The Appellant's Notice of Appeal is dated 12 August 2011. In the Tribunal's view the grounds addressed by the Appellant are in effect two-fold.

27. First, he takes issue with the Commissioner's determination in the Decision Notice that the exemption in section 24(1) is engaged at all and second, that the public interest in maintaining the exemption did not outweigh any public interest in disclosure.

28. In turn, three separate arguments are addressed largely it seems if not exclusively in support of the first ground of appeal.

29. The first such argument is that it is simply not credible to allege, as did the public authority, that anyone let alone the state could be exposed to any risk of harm by the disclosure of the information sought. What was sought it was claimed was information about the total cost only: no request was made for such detailed matters as numbers and grades of personnel or the location or whereabouts of the particular protection afforded in any particular case or similar information.

30. Similarly, as indicated earlier, there exists, it is said, a clear precedent for the release of the type of information sought in this case. The cost of security for the House of Commons was already in the public domain. There was therefore an illogical and unjustifiable anomaly in refusing to provide the information sought in the present case.

31. Third, any suggestion that release of the information presently sought when coupled with other information in turn was it was claimed likely to have a chilling effect on the release of other information in other spheres.

32. These arguments will be dealt with in further detail below.

Further written exchanges prior to the Appeal

33. The Commissioner served a formal written Response in the wake of the Notice of Appeal. With all due respect to the Commissioner although the contents of the Response amplified points that had previously been raised by both the Commissioner himself and by the

public authority, it is fair to say that any fresh contentions addressed by the Commissioner were advanced at greater length during the Appeal.

34. The same comments as are made above can be made about a subsequent written Reply submitted by the Appellant. However, out of fairness to the more detailed manner in which the Appellant revisited his submissions in the Appeal the Tribunal feels that a number of the Appellant's comments in this Reply should be alluded to at this point.

35. First, he claimed that there was a "valid debate" about which members of the Royal Family should be protected by public money. Consequently he claimed that a reduction in security operations may mean that SO14 had ceased to provide proper or adequate security for any particular member of the Royal Family or for the individuals or other matters otherwise protected by SO14. He added, however, that the withdrawal of such publicly paid security did not necessarily mean that the individual or party concerned would be more susceptible to a security risk given that privately funded security was quite likely to remain in place, ie paid for by the Royal Family itself. The Tribunal pauses here to note that it received and heard no evidence to the effect suggested that funds provided by the Royal Family itself as distinct from public funds were used to provide protection for the Royal Family.

36. Secondly, the Appellant claimed that "perceptions" about the level of royal security were to be disregarded. He added that the perception about how much security was being provided could be "managed" adding that it was a job of the public authority in question to "manage that perception".

37. Thirdly, the Appellant claimed that it was "factually incorrect" to claim that the Royal Family "is at the heart of the constitution". It was therefore "not credible" to argue that the protection of the Royal Family "is akin to protection of the national interest or national security".

38. Fourth, although the Appellant conceded that knowing the number of police officers in any particular force, year upon year, would allow

comparisons to be made as to the strength of public security in a given time period, similar arguments could be made about many other pieces of publicly available material and information, he claimed, including the location of Ministry of Defence bases and other governmental buildings. This was a reflection of the additional nature of the chilling effect of disclosure already referred to above at paragraph 31.

39. The public authority also submitted a written response. In it, it pointed out that at the time of the Appellant's request in September 2010 the terrorist threat in the United Kingdom as said by the Home Office stood at "severe" meaning that the Home Office considered that such an attack was "highly likely".

40. The public authority went on to claim that a mosaic effect of information was at risk based on existing publicly available information, eg the number of SO14 officers in previous financial years, the total budget for Protection Command in the most recent financial years and media reports on the annual cost of protecting specific high profile individuals.

41. By way of specific response to the major contentions in the Grounds of Appeal the public authority made three contentions. First, the disputed information would shed no light upon and was entirely irrelevant to a number of the Appellant's concerns, one such concern being the one referred to above, namely the debate about which members of the Royal Family should be protected by public money.

42. Secondly, and contrary to the Appellant's suggestion, release of budgetary trends could be and were very good indicators of the level of security otherwise deployed. When viewed in that light, disclosure of information sought would be seen as fundamental to perceptions of relative vulnerability. It was therefore not enough to say that the Police would simply "deal with" any increased risk.

43. Third, it was wrong to suggest that senior members of the Royal Family did not play a central role in the nation's constitutional arrangements.

At any event an attack on a member of the Royal Family would constitute an attack on the constitution itself.

The evidence

44. The evidence presented to the Tribunal was both documentary and oral. The former included a written breakdown of the main activities of SO14 which apart from the principal activities already described above included responsibility for protecting members of certain Royal families visiting the UK, the provision of Special Escort Group mobile protection for protected persons, high risk prisoners and high value property and the operation of a Fixated Threat Assessment Centre (FTAC) in turn responsible for the assessment and if necessary intervention in relation to people fixated on protected persons and sites. Protection Command also encompasses SO1 dealing with specific politicians, eg the Prime Minister and certain government ministers and SO6, namely the Diplomatic Protection Group.

45. The Tribunal was shown extracts from exchanges made before the House of Commons and in particular the Home Affairs Committee which together confirmed the proposition advanced by the public authority, already referred to, to the effect that it was a long standing policy that no details are given of specific security arrangements or of funding arrangements except for what has been called on one occasion at least in September 2010 the aggregated figure for the Home Office Dedicated Security Post (DSP) Grant which funds specialist police roles relating exclusively to the protection of the Royal Family and other public figures and their residences. The figure attributed to the provision of security arrangements for the year 2010 was stated to be £128 million. It was also stated at that time that there had been “some small decrease in the allocation” to the Metropolitan Police Authority but the latter Authority had supported this decrease with an additional £4 million to manage additional threats and risks.

46. The remainder of the documentary material put before the Tribunal consisted principally of a variety of published material from various sources designed to show that the internet was regarded as a highly material component in relation to activity carried out in relation to the threat of terrorism and by those with an intent to carry out attacks of the sort in relation to which Protection Command was established and is deployed. In particular the Tribunal was shown and taken to various passages in a publication entitled "How Modern Terrorism Uses the Internet: a Special Report published by the United States Institute of Peace" which points to the many ways in which the Internet can be used by terrorists and others of a similar disposition.

47. The Tribunal heard from 2 witnesses both in open and in closed sessions. The first was Chief Superintendent Des Stout, the current SO14 Royal Protection Operational Command Unit Commander.

48. He confirmed that when called upon, SO14 operated on a worldwide basis. In addition to confirming the nature and scope of SO14's responsibilities as referred to above, he said that SO14 was divided into three sub units. First there was residential protection which provided protection in respect of Royal Palaces and residences and second, there was close protection which provided personal protection to members of the Royal Family and visiting Royals from other countries and third the special escort group which provided mobile escorts and convoy security for all protected persons when required.

49. He also confirmed that funding for Protection Command came from the Home Office grant already referred to, namely the DSP. This arrangement he confirmed meant that the Home Office on behalf of the Government had overall oversight of the provision of protection in respect of those to whom SO14 provided its services. This was because he said such protection was considered as being relevant to national security.

50. As for the Appellant's request he said that the public authority's approach to its response in the present case was shared across other relevant Government departments and other stakeholders. He said that to his knowledge the public authority had not disclosed the figure which was the subject of this request, nor other similar figures. In particular it did not disclose the costs of protection incurred at the Royal Wedding in April of 2011.

51. Again by way of revisiting the issues raised above he confirmed that the Royal household is "entirely dependent" upon SO14 not for all security but for all its protection services. He reminded the Tribunal that there had been a number of attempted attacks over the past 200 years, the most recent being an attempted kidnap of Princess Anne in 1974. Any such attack was characterised not only as a criminal offence but also as the cause of endangering the health and safety of the individual or individuals in question as well as constituting matters of national security. An attack on staff or members of the public at any of the Royal residences, eg Buckingham Palace, which attracts some 5,000 visitors a day would also entail the same considerations.

52. He referred to the engagement of the mosaic effect referred to above. In particular he pointed to the mosaic effect in this case having repercussions as to the inferences which would be drawn not only with regard to SO14 itself but also with regard to other units, eg SO1 and SO6.

53. He emphasised that when it came to preventing attacks on those persons who received protection, "confidence and perception" were often much more important than an accurate picture of the situation, ie a potential attacker was very often deterred because he or she might not regard the chances of success as being particularly attractive. Any such confidence that might otherwise be felt had therefore to be minimised; that could only be achieved by the attacker remaining uncertain about the levels of protection.

54. He confirmed that recourse was regularly made to the internet or as it was called data-mining, ie the collection of information from publicly available sources and that this was a recognised strategy employed by those intent on planning terrorist type activities.

55. As for expenditure he pointed to the fact that a mosaic picture would be built up in part by scrutinising published public expenditure including information relating to the public accounts of police forces. A vast majority of any given policing budget is accounted for by the use of and costs attributable to officers. He stated that it could be deduced from published borough budgets as to what level of policing response could be deployed for the amount of money which was disclosed or ascertainable. In particular he said that if one knew a total policing budget for a particular year one could readily arrive at an estimate of the number of officers employed when combined with other available information thereby encouraging or discouraging the commission of crime.

56. Although the budget on an overall basis as previously explained was a figure of £128 million as referred to in the exchanges with the Parliamentary Committee in September 2011 that figure he claimed was at too high a level to enable any meaningful conclusions to be drawn as to the level of protection afforded to any one individual or group of individuals. He drew an analogy with disclosure of policing costs on a local borough level even though public authorities' websites set out the numbers of officers and staff who worked in each London borough as at September 2011. He added, however, that borough level disclosure of this sort did not support meaningful inferences by potential attackers because borough level forces covered their entire area not being dedicated to guarding specific sites or targets.

57. He frankly admitted that revelation of the information sought would not provide a "cast iron indicator" of the levels of protection. He repeated that what this would achieve would constitute an important part of the mosaic. He pointed to one particular possible consequence of

disclosure in this case, namely the possibility that speculation could be made as to whether and if so to what extent individuals under SO14's protection had been or were more protected than individuals under the protection of SO1 or SO6.

58. He reminded the Tribunal that the Appellant had made a request for a budget figure in relation to the financial year ending on 31 March 2010. The Coalition Government came to power in May 2010 by which time the SO14 budget for 2010/11 had been set and was being implemented. It followed that the spending cuts had not yet begun to take effect at the date of the request. Therefore the general public assumption would be that the SO14 budget for 2009/10 was a "very reliable" indicator of its budget for 2010/11. This meant, he said, that at the time of the request the information was very much "alive" rather than historical. He added that its value to the potential attacker would have been all the greater then, though he emphasised that it would still remain a very valuable piece of the mosaic even now.

59. In relation to the Appellant's claim that the issues in the present appeal reflected a close parallel with security costs regarding the Houses of Parliament, which were publicly available, he pointed to the fact that there was no real analogy and it was unclear how that figure was made up, in particular whether it related to police officers, contracts with private security firms, CCTV cameras or other hardware etc. There was therefore no proper comparison he claimed with the functions and role of SO14: security arrangements regarding Westminster were very much "site specific".

60. The second witness from whom the Tribunal heard was Georgina Balmforth. She is currently the Head of Protected Security Section, Office for Security and Counter-Terrorism (Protect) Home Office. Ms Balmforth acts as the Secretary to the Executive Committee for the Protection of Royalty and Public Figures (Executive Committee). The Home Office has assumed responsibility for royalty protection since 1999 although it previously had provided central coordination as to the

protection of public figures from terrorism since 1990. Decisions about royalty and VIP protection are taken on behalf of the Home Secretary by the Executive Committee. The Home Secretary retains ministerial accountability for matters of security.

61. She rejected any suggestion that decisions regarding the protection of Royalty were in any way influenced by members of the Royal Family themselves. The Executive Committee which took decisions on behalf of the Home Secretary came to its decision, she said, "based on hard-headed analysis of security"; its role is to "pursue security arrangements that are proportionate and risk-based."

62. The Home Office is responsible for allocating funding from what has already been called the DSP to police forces in England and Wales. This grant provides funding for the provision of specialist police protection, ie in effect to Protection Command.

63. She confirmed that in July 2010 as part of the Government's Comprehensive Spending Review, the Executive Committee commenced a detailed review of all protection arrangements on a risk-assessed basis to ensure they were reasonable and cost effective. More detailed reviews occurred from January to November 2011. The position is to be reviewed in detail in November 2012.

64. Mr Stout was cross examined by Counsel on behalf of the Appellant. The Tribunal is of the view that nothing which was elicited from him in cross-examination in any material way affected or qualified the gist of his written evidence in chief as summarised above. He did, however, point out that when persons who were otherwise protected by SO16 visited sites outside London, whether or not and/or the extent to which SO16 would continue to provide the same level of protection depended on the particular circumstances. In re-examination he stated that between 80-90% of the costs attributed to SO16 went on what he called manpower.

65. In cross-examination Ms Balmforth confirmed that a representative of the Royal household would attend at meetings of the Executive committee but that the Committee otherwise had an independent chairman or chairperson and it recorded its activities in formal minutes. Those formal minutes are not publicly available and they are not provided to the home secretary as a matter of course. However, if the Home Secretary requested sight of them there would be no problem in the Home Secretary seeing them, and that updates were regularly provided by the Committee on its work to the Minister and the ministerial private office ,usually at least once monthly. She was not able to confirm whether the Home Secretary was in turn bound to report upon the meetings of the Committee to some higher authority at least as to budgetary matters. She denied the suggestion put to her and rejected the contention that the Committee or any of its members was or were subject to any form of conflict of interest.

The rival contentions

66. The Appellant's main contentions can be summarised as follows. First, as indicated above, the Appellant denies that section 24(1) is engaged at all. This contention can be further broken down into three additional propositions. First, although the Appellant accepts the width of the proposition in the *Kalman* decision to the effect that the interests of national security can be taken to include the protection of the state's constitutional components, it is incorrect to state that the entire Royal Family forms part of the constitutional systems of the State. Second, the release of the information sought to be disclosed in this case would neither directly nor indirectly create a real possibility of an adverse effect on this country, again reflecting the language in the *Kalman* decision. Third, it is contended that release of the information sought in the present case will have no impact either alone or as part of any mosaic. In particular no detailed information about the equipment, tactics etc of SO14 could be gleaned from the information sought nor would the information instil any confidence or any further confidence in

the minds of potential attackers. SO14 has a number of specific roles not all of which are related to the protection of members of the Royal Family and in this context the information sought would be meaningless. Moreover, reliance is also placed on the revelation of security costs attributable to the Palace of Westminster.

67. The second principal submission is that even if the exemption in section 24(1) is engaged, the public interest militates in favour of disclosure and not in favour of maintaining the exemption. In particular reliance is placed on the openness and transparency of the Government generally with regard to a proper accountability as to the nature and extent of expenditure and the allocation of public resources.

68. The same contentions were deployed in relation to the applicability of the other two exemptions which have been referred to, namely sections 38 and 31 of FOIA.

69. The public authority and the Commissioner addressed these contentions in the following way. With regard to the first primary contention of the Appellant that the exemption, namely section 24(1) was not in issue it was contended that there could be no doubt that there existed potential or actual terrorists not to mention fixated individuals, ie those with violent or dangerous obsessions of various types as well as other criminals, intent on attacking the United Kingdom and its constitutional organs including members of the Royal Family and other individuals and units protected by Protection Command. At the time of the request the risk was characterised as severe.

70. In the Tribunal's firm view (quite apart from its conclusions expressed in the closed judgment which accompanies this open judgment) the above contentions made by the public authority and by the Commissioner are undoubtedly well-founded.

71. There can therefore be no doubt but that the exemption is firmly engaged in this case.

72. As for the Appellant's contention that no constitutional issue is in play the answer provided by both Respondents was quite straightforward and is one which the Tribunal again firmly accepts. The protected individuals include individuals who are central to this country's constitutional arrangements and public life. In addition any attack on such individual or individuals or of potential sites protected by SO14 not only would be a criminal offence but would also constitute a danger to health and safety of the individual in question such as to justify reliance on sections 31 and 38 of FOIA quite apart from constituting an assault on national security.

73. This same issue was in effect in the Tribunal's view a recognition that it is not sufficient for the purposes of section 24 that the information merely relates to national security. The exemption must be "required for the purpose of safeguarding national security". Put another way, is the exemption from the duty to disclose the requested information reasonably necessary to prevent a real and substantial increase in the risks of attack on national security? Again in the Tribunal's firm view the answer is clear. There can be no doubt that when considered in the context of the mosaic effect as to which more will be said below, there is here present a real and substantial increase in the relevant risk.

74. With regard to the second sub issue raised by the Appellant in connection with his first primary submission to the effect that release of the disputed information would be of no consequence the answers provided by both Respondents were based primarily, if not exclusively, on the evidence of Chief Superintendent Stout.

75. There can be no doubt in the Tribunal's judgment that the mosaic effect alluded to in some detail by the Chief Superintendent would be enough to raise the level of risk attendant upon the possibility of an attack on the persons and sites protected by SO14. For present purposes it is sufficient to set out a number of key contentions made in particular by the public authority in open session in this regard.

76. First, when asked about whether there was any risk or any increased risk of a possible attack by virtue of the disputed information being released, the Chief Superintendent confirmed that there could be no doubt that there exist those kinds of individuals and bodies quite capable of carrying out the types of attack which the public authority seeks to protect against. Second, he stressed that the critical question in this last regard is whether such persons feel sufficiently confident or bold in planning or implementing any attack irrespective of whether such confidence is rational or not. Third, any such confidence is likely to be enhanced if details of the manpower deployed with regard to the protection of key individuals were known or even guessed at on the basis of the information in question. Fourth, even on the limited budgetary information already referred to and publicly available and as confirmed in the course of the parliamentary exchanges referred to above release of the information now sought might well allow certain inferences to be drawn with regard to the manning levels of police protection afforded by Protection Command on a year by year basis.

77. The above arguments in the Tribunal's view provide clear justification for a finding that the exemption under section 24(1) quite apart from the other two exemptions is firmly engaged.

78. Both Respondents then turned to a number of specific contentions advanced by the Appellant which have been referred to above in support of their overall contention that all three exemptions were engaged. First reliance was placed on the fact that release of the budgetary information about security arrangements for the Palace of Westminster provides a proper justification for release of the disputed information in the present case.

79. As indicated above the Respondents claimed that entirely different types of security and protection arrangements are in play in the case of a building where such items as CCTV play an important role, an element of security which almost by definition would not play a similar role in the operational activities of SO14. Next, insofar as not

answered in the previous sentence, the Houses of Parliament entail what are called site-specific considerations and introduce elements which find no equivalent weight in relation to SO14. Third, it was argued that just because the Palace of Westminster security figures had been released and have to date at least not led to an attack on the Houses of Parliament this did not mean that disclosure would equally not raise the level of threat in relation to the Royal Family and the Royal residences.

80. In addition the public authority rejected any contention that non disclosure in the present case would necessarily lead to an overall chilling effect with regard to information sought to be disclosed in other areas. This Tribunal again firmly shares that view. Each case must be looked at on its merits. Neither Respondent in the present case sought to go as far as claiming that any element of public interest was “in-built” in relation to section 24 in an analogous way to the way in which case law within the Tribunal and above has viewed at least one other exemption, eg legal professional privilege. This is perhaps understandable in the present case given the compelling force of the open evidence in this case as well as the conclusions considered and reached by the Tribunal in closed session.

81. The public authority resisted any suggestion that it was claiming that in the light of the parliamentary exchanges which have been referred to above the information requested should be withheld because it has always been withheld. Again the Tribunal entirely accepts that proposition. However, it takes account of the fact (though this is by no means any more than a minor consideration) in considering the applicability of section 24 that, for there to be an order for disclosure in the present case there would be a departure from a long standing practice which has, so far at least, not been shown to be counter-productive.

82. The Tribunal also accepts that the arguments advanced and addressed in the preceding paragraph go at least in part to an assessment of the

competing public interests. It is to that issue reflecting the subject matter of the second primary submission of the Appellant to which the Tribunal now turns.

83. The Respondents, in particular the public authority, emphasise the strong public interests inherent in the exemption; this has been referred to above in paragraph 80. If nothing else there are grave consequences should the exemption not be maintained. See eg *BUAV v IC and Newcastle University* (EA/2010/0064) especially at paragraph 18 with regard to section 38.

84. The Respondents also go on to point to the fact that were the disputed information to be released it would not assist or inform the public in any meaningful way mindful of the public interest in the accountability which the Appellant claims is in issue. In addition the Respondents claim that Ms Balmforth's evidence as given in open session, makes it clear that a proper degree of accountability is already in place in the way in which the responsible committee is answerable in all material ways, including in relation to financial matters, to the Home Secretary and in all probability beyond. The public authority rejected any suggestion that any decision of the Committee was subject in any way to what was called a vested interest and in particular any such interest emanating from the Royal household.

85. As indicated above, the Appellant had in a short witness statement as well as by his Counsel in submission appeared to indicate that there was in particular an additional form of accountability and transparency required in the present case in order to assess the extent to which, if any, money used to finance Protection Command and in particular SO14 emanated directly or indirectly for the Royal family itself as distinct from the public purse. Whether or not that additional contention is made (and for present purposes the Tribunal is content to accept that it was not) the fact remains that revelation of the headline figure sought in this case would clearly do nothing in terms of informing the

public that its money had been well spent or not, either in that or in any other way.

86. In short and by way of reflection of the matters set out in the Commissioner's Decision Notice, the public authority declined to say that there was no public interest in disclosure in the present case: simply that such interest as there was in that respect was heavily outweighed by the public interest in maintaining the exemption.

87. For all the above reasons in effect reflecting the acceptance by the Tribunal of the contentions addressed by the public authority and by the Commissioner, the Tribunal has no hesitation in finding that section 24 was engaged in relation to the present request.

88. For the same reasons it is equally emphatic in its view that in any event the exemptions in section 38 and 31 of FOIA are also engaged. In this respect the public authority not only draws attention to the open evidence of Chief Superintendent Stout but also to the fact that as a matter of criminal law the prospect of terrorist offences would constitute an offence or offences, eg under the Terrorism Act 2006. As indicated above the threshold relied on by the public authority is "would be likely to" rather than "would" with regard to the endangering of an individual's safety as referred to in section 38(1)(b). The concern in the present case is not simply with health and safety of those protected by SO14 but also those protected by other units within Protection Command. Disclosure of the disputed information would not simply lead to the disclosure directly or indirectly of the level of protection afforded by SO14: it would also allow inferences to be drawn about the level of protection provided by the other units under Protection Command. In addition the public's health and safety would be in issue.

The Public Interest Test

89. Many of the issues addressed by the Tribunal in connection with the engagement of the exemptions in particular section 24 relate to whether the public interest considerations militate in favour of

maintaining the exemption or exemptions in play as distinct from militating in favour of disclosure.

90. At the heart of this issue in the Tribunal's firm view is whether and if so to what extent disclosure of the information sought would serve legitimately to inform the debate about the way in which public money is spent. This has been referred to on more than one occasion above. The Tribunal is entirely persuaded that the disclosure sought would not add either significantly or at all to that debate. In the Tribunal's judgment, no other desirable objectives flow from disclosure. The suggested benefits are in no particular order, first the fact that Royal protection is not always based on a hard-headed assessments of the security considerations and has been duly influenced by the Royal Family itself; second, the fact that there is a real debate about whether and if so to what extent individual members of the Royal Family should be protected by public money and thirdly and arguably that there should be scrutiny in relation to the extent to which the Royal Family or possibly the Royal Household plays a key part in relation to protection activities. In the Tribunal's judgment it is self evident that none of these issues has any light shed on them by the disclosure which is sought.

91. In any event the Tribunal is entirely satisfied that if there is any wider element of accountability going beyond the three specific areas of possible public interest referred to in the preceding paragraph, ie some greater public debate about the role of the resources dedicated in round terms to the Royal Family, again the Tribunal finds that disclosure of the requested information would not enhance such a debate in any meaningful way.

92. Such conclusions are in the Tribunal's view fortified by the clear and conclusive evidence provided in open session by Ms Balmforth which the Tribunal has no hesitation in accepting. First, she confirms that the activities with regard to protection duties are subject to proper scrutiny subject to the need to preserve the requisite confidentiality. Second,

she emphasises that the degree of scrutiny includes accountability in financial matters.

93. Turning to the other two exemptions which were relied on initially by the public authority the Tribunal is equally firmly of the view that if such exemptions do not in the present case have a degree of in-built public interest certainly they have the same weighty public interest reflecting the public interest considerations which the Tribunal has considered in relation to section 24(1).

94. Both the public authority and the Commissioner have each acknowledged the public interest in transparency and accountability insofar as the use of public funds is concerned. They have each also recognised the value of public debate regarding national security as a whole and the importance of scrutinising and considering the role, function and effectiveness of the types of services provided by SO14. The Tribunal, however, remains firmly of the view that disclosure of the information sought in this case would make a very limited contribution to such debate or debates, if any.

95. In the circumstances the Tribunal finds that with regard to each of the three exemptions the public interest in favour of disclosure is heavily outweighed by the public interest in maintenance of the exemptions.

Aggregation

96. Reference was made above to the need to consider aggregation. Given the strength of its conclusions namely that the public interest in maintaining any of the three exemptions firmly outweighs any interest in disclosure there is no need for the Tribunal to consider aggregation further. The Tribunal has not found that the public interest in maintaining each exemption in isolation does not outweigh the public interest in disclosure. However, had it done so it would unhesitatingly have found that the aggregated or cumulative public interest in maintaining all the engaged exemptions would still have outweighed the public interest in favour of disclosure. The aggregated interests are

those which have been referred to on more than one occasion in this appeal. They would include the various risks to the specific protected individuals and sites as well as to the public and the risks related thereto in relation to matters of national security.

Conclusion

97. For all the above reasons the Tribunal dismisses the Appellant's appeal and upholds the terms and effect of the Commissioner's Decision Notice.

David Marks QC
Tribunal Judge

Dated: Friday 24 February 2012