

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 February 2010

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

Summary

The complainant requested the total sum of money provided by the public authority to Thames Valley Police in order to fund the policing operation relating to the new animal research centre at the University of Oxford. The public authority refused to disclose this, citing the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime) and 38(1)(a) and (b) (endangerment to health and safety). The Commissioner finds that these exemptions are not engaged and the public authority is required to disclose the information in question.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made the following information request on 14 October 2008:

"How much money has the Home Office given Thames Valley Police since work started on the University of Oxford's new animal research centre, to date, to pay for the policing operation set up to facilitate the construction of the building, to police the animal rights protests it's attracted and to tackle the related crimes carried out by animal rights extremists?"

I would like a separate figure for each previous financial year, the current financial year to date and a total figure to date."

3. The response to this request was dated 6 November 2008. The request was refused, with the public authority citing the exemptions provided by sections 31(1)(a) (prejudice to the prevention and detection of crime) and 38(1)(a) and (b) (endangerment to health and safety).
4. In connection with section 31(1)(a), the public authority believed that prejudice would occur through revealing the scale of the policing operation, which would enable animal rights extremists to plan their activities accordingly. In connection with sections 38(1)(a) and (b), the public authority believed that animal rights extremists could use the information requested in planning attacks against individuals associated with the University of Oxford and that this would endanger the health and safety of potential victims of such attacks. The public authority addressed the balance of the public interest in a general fashion, rather than separately in relation to each of the exemptions cited, and concluded that the public interest in the maintenance of these exemptions outweighed the public interest in disclosure.
5. The complainant responded on 14 November 2008 and requested that the public authority carry out an internal review of its handling of the request. The complainant stated that she was aware that animal rights activists had attempted to gather information on how the animal research centre was being policed and for this reason had asked for yearly totals rather than a more detailed breakdown. The complainant did not accept that a yearly cost total would reveal the scale of the policing operations as it would not reveal how this money had been spent. The complainant also stated that she would accept an overall total if it was not possible to disclose yearly totals.
6. The public authority responded with the outcome of the internal review on 27 January 2009. The refusal under sections 31(1)(a) and 38(1)(a) and (b) was upheld, with the public authority concluding that the likelihood of prejudice to the prevention or detection of crime and of endangerment to health and safety meant that the balance of the public interest favoured maintenance of these exemptions.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 10 April 2009. The complainant did not accept that disclosure of the information requested would reveal anything about the policing operation. The complainant stated that it was a matter of public knowledge that this policing operation was made up of a uniformed team, an investigative team and an intelligence team and that disclosure of the information requested would not reveal how many police officers were involved in the operation. The complainant believed that the public interest in disclosure of the information in question outweighed any of the concerns of the public authority.

8. Following discussions about this case with the public authority, the Commissioner contacted the complainant on 10 November 2009. The complainant was advised that the public authority maintained that the information requested should not be disclosed, both the overall total and the yearly breakdown. The complainant was also advised that the preliminary view of the Commissioner was that the yearly breakdowns should not be disclosed, but that it was significantly more likely that the Commissioner would conclude that the overall total should be disclosed.
9. Given that the complainant had stated in her internal review request and when making her complaint to the Commissioner that she would be satisfied with disclosure of the overall total if disclosure of the yearly breakdown was not possible, the complainant was asked to respond confirming whether she wished the Commissioner to reach a formal conclusion in relation to both the yearly breakdowns and the overall total. The complainant responded on 11 November 2009 and stated that she wished the Commissioner to reach a formal conclusion only in relation to the overall total. The analysis in this Notice relates only to the request for the overall total provided by the public authority to Thames Valley Police.

Chronology

10. The Commissioner contacted the public authority initially on 3 June 2009. The public authority was asked to respond with further explanations for the exemptions cited and with a copy of the withheld information.
11. The public authority responded to this on 24 July 2009 and set out its reasoning for the citing of sections 31(1)(a) and 38(1)(a) and (b). The public authority did not at this stage provide to the Commissioner's office a copy of the information.
12. The Commissioner contacted the public authority again on 22 September 2009 and stressed that it would be necessary for it to allow the Commissioner's office sight of the figures withheld from the complainant. It was also noted that the complainant had indicated the she would be satisfied with disclosure of the overall total if disclosure of the yearly breakdowns was not possible. The public authority was asked to confirm if it maintained that neither the yearly breakdowns nor the overall total should be disclosed and for further explanations of its arguments.
13. The public authority responded to this on 3 November 2009 and provided the cost figures that had been withheld from the complainant. The public authority also confirmed that it maintained that neither the yearly breakdowns nor the overall total should be disclosed and provided further clarification of its arguments.

Analysis

Exemptions

Section 31

14. The public authority has cited section 31(1)(a), which provides an exemption for information the disclosure of which *would*, or *would be likely* to, prejudice the prevention and detection of crime. This section is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice. Consideration of this exemption is a two stage process; first, disclosure must be at least likely to produce prejudice relevant to this exemption. If such prejudice would be a likely result of disclosure, then the exemption is engaged. Secondly, this exemption is subject to the public interest. This 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.
15. The first step in assessing whether this exemption is engaged is to consider whether the arguments of the public authority are relevant to the prejudice specified in this exemption. The argument of the public authority is that disclosure would jeopardise the policing operation surrounding the animal research centre as the cost information specified in the request would be of assistance to animal rights organisations seeking to evade the policing operation and disrupt the centre. The Commissioner accepts that the result of disclosure predicted by the public authority would constitute prejudice to the prevention and detection of crime and is, therefore, relevant to section 31(1)(a).
16. Turning to the likelihood of the prejudice predicted by the public authority, the Commissioner has in this case considered whether the prejudice *would be likely* to occur. In order for the Commissioner to conclude that prejudice would be likely to occur, the possibility of this must be real and significant and more than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) in which it stated:

“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.” (paragraph 15)
17. The basis of the argument advanced by the public authority is that it believes that animal rights groups would seek to use the information in question to circumvent the policing operation. The public authority believes that the cost information in question would provide an insight for such groups into this policing operation, including how much of this is made up of covert policing, and that this information could then be used in efforts to undermine policing. The public authority has referred to “specific examples” of animal rights groups utilising “seemingly innocuous” information when planning and carrying out unlawful activity and believed that a decision by the Commissioner in favour of disclosure in this case

- would set a precedent for disclosure of similar information in future, leading to a wider prejudice than to the policing of the Oxford centre.
18. The Commissioner accepts the basic premise of the first argument of the public authority in that there is evidence to suggest that there are animal rights activists who would seek to use any information disclosed to undermine the policing of the centre. This evidence is in the form of examples of where animal rights activists have taken unlawful action in pursuance of their goals. It is also the case that the animal research centre referred to in the request has been the subject of particular controversy; the public authority made specific reference to an extremist animal rights organisation having targeted the construction of the Oxford centre for disruption and a High Court Injunction having been obtained against this organisation.
 19. Having established that there are those who would attempt to use the information requested to undermine the policing operation, the next step is to consider whether there is a real and significant risk that knowledge of the total funds provided by the public authority to Thames Valley Police for the policing of the centre could be usefully employed in an attempt to undermine the policing operation. The public authority has suggested that knowledge of the level of visible policing, combined with an understanding of the cost of the visible policing and knowledge of how this differs from the total costs figure, could be utilised to deduce the level of covert policing taking place. This knowledge could then be used to calculate the possibility of detection through covert policing, or to form the conclusion that attempts at unlawful activity should not be inhibited by fear of detection through covert policing if the figures revealed that the level of covert policing was small. The public authority has also confirmed that it bore the entirety of the cost of the policing of the Oxford centre.
 20. The Commissioner accepts that it is conceivable that the financial information in question may reveal a discrepancy between the cost of the visible policing and the overall cost of the policing operation. The Commissioner does not, however, believe that this would reveal sufficient detail about the covert aspect of this operation that this could be of use in attempting to circumvent this policing operation for the following reasons.
 21. First, the total figure covers a period of several years; it is not, for example, broken down by year and reveals no detail about the cost of particular aspects of the policing. Had it been the case that the request had been for details of the cost of policing a particular day of protests, for example, the argument that this would reveal something meaningful about the policing operation may have been stronger. With the request worded as it is, however, the Commissioner considers that the period of time that the information in question relates to casts doubt on whether this could usefully be employed to undermine policing.
 22. Secondly, as noted above the public authority stated that it was aware of specific examples of animal rights organisations using “innocuous” information when carrying out unlawful activity. The public authority did not state that this “innocuous” information was financial information and also did not support this statement with evidence. The position of the public authority would have been

stronger had it supplied evidence of examples of where disclosure of similar information to that requested in this case had led to prejudice relevant to section 31(1)(a).

23. The Commissioner does not accept the premise of the argument of the public authority about a decision in favour of disclosure in this case unavoidably setting a precedent where similar information is requested in future. In response to this argument the Commissioner would stress that his decision in each case is based on the factors that apply in that case. It is not the case that a decision to disclose here would necessarily apply in a future case where similar information has been requested, since there may be strong arguments against disclosure in that case.
24. The conclusion of the Commissioner in relation to section 31(1)(a) is that the threshold of real and significant risk of prejudice is not met. Whilst the Commissioner accepts the premise of the arguments of the public authority in that there is plentiful evidence to suggest that there are those who would attempt to use the information requested to circumvent the policing operation, given the lack of detail within this information, a total figure covering several years, and the absence of evidence specifically relating to how this cost figure could be used to circumvent policing, the Commissioner does not believe that the likelihood of prejudice is sufficiently high. The Commissioner finds, therefore, that the exemption provided by section 31(1)(a) is not engaged. As this conclusion has been reached it has not been necessary to go on to consider the balance of the public interest.

Section 38

25. The public authority has cited sections 38(1)(a) and (b), which provide an exemption for information the disclosure of which *would*, or *would be likely* to, endanger physical or mental health, or endanger safety. As with section 31(1)(a), consideration of this exemption is a two stage process; for information to be withheld the exemption must first be engaged and, secondly, the public interest in the maintenance of the exemption must outweigh the public interest in disclosure.
26. The first steps in considering this exemption are to establish that the arguments advanced by the public authority are relevant to the exemption and to whom the predicted endangerment would result. The public authority has advanced the same argument here as in connection with section 31(1)(a) and stated that it believes that enabling animal rights activists to carry out unlawful activities would be likely to endanger the health and safety of those who may be the target of those activities. The public authority has also argued that disclosure could lead to the identification of police officers operating covertly and that this could endanger their health and safety. The Commissioner accepts that the arguments of the public authority are relevant to the endangerment described in this exemption and that the subjects of the endangerment have been identified.
27. Turning to the likelihood of this endangerment, the Commissioner has considered whether endangerment *would be likely* to occur. The test for this is as set above at paragraph 16; the likelihood of this endangerment must be real and significant. The Commissioner's analysis of the main argument of the public authority; that

disclosure would assist in circumventing policing and that this would be likely to lead to endangerment to the health and safety of targets of unlawful activities by animal rights activists, is as set out above in the section 31(1)(a) analysis. In short, the Commissioner does not accept that the information in question includes sufficient detail that this would be a real and significant likelihood.

28. Turning to the second argument advanced by the public authority, that disclosure would be likely to lead to the identification of those working covertly, again the Commissioner considers the lack of detail within the information to be significant. Even if it were accepted that the information would suggest that there had been a covert element to the policing, in the absence of a more detailed argument on this point from the public authority the Commissioner does not believe that this financial figure relating to a period of several years would make the identification of any individual operating covertly any more likely.
29. The conclusion of the Commissioner is that the exemptions provided by sections 38(1)(a) and (b) are not engaged. The basis for this conclusion is that the Commissioner does not accept that disclosure would assist in any attempt to undermine the policing operation for the same reasons as set out in the section 31(1)(a) analysis; and that he also does not accept that the information contains sufficient detail that it would make the identification of individuals operating covertly more likely than would be the case without this disclosure. As this conclusion has been reached it has not been necessary to go on to consider the balance of the public interest.

Procedural Requirements

Sections 1 and 10

30. In failing to disclose the information requested within 20 working days of receipt of the request on the basis of exemptions that the Commissioner has found were not engaged, the public authority did not comply with the requirements of sections 1(1)(b) and 10(1).

Section 17

31. In addressing the public interest in a general fashion, rather than separately in connection with each of the exemptions cited, the public authority failed to comply with the requirement of section 17(3)(b).

The Decision

32. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it refused to disclose the information in question on the basis of the exemptions provided by sections 31(1)(a) and 38(1)(a) and (b), all of which the Commissioner now finds are not engaged. In so doing the public authority failed to comply with the requirements of

sections 1(1)(a) and 10(1). The Commissioner also finds that the public authority failed to comply with the requirement of section 17(3)(b).

Steps Required

33. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- disclose to the complainant the total sum of money provided by the Home Office to Thames Valley Police for the policing of the University of Oxford animal research centre covering the period from the beginning of this funding up until the date of the request.

34. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

35. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

36. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. Neither did the public authority respond within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

37. 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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

38. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 24th day of February 2010

Signed

**Lisa Adshead
Senior FOI Policy Manager**

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

Legal Annex

Section 1

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 10

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 31

Section 31(1)(a) provides that –

“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 or detection of crime”

Section 38

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”