

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 March 2011

Public Authority: The Chief Constable of Bedfordshire Police
Address: Woburn Road
Bedford
MK43 9AX

Summary

The complainant requested information from Bedfordshire Police concerning its investigation into allegations that former MEP Tom Wise and his researcher, Lindsay Jenkins, had misused parliamentary allowances. Mr Wise eventually pleaded guilty to charges of false accounting and money laundering; Ms Jenkins was acquitted. Bedfordshire Police provided the complainant with some information but argued that the remainder of the information was exempt from disclosure on the basis of section 30(1)(a)(i) of the Act and that in all of the circumstances of the case the public interest favoured maintaining the exemption. The Commissioner has concluded that Bedfordshire Police was entitled to withhold the remaining information on this basis.

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.

Background

2. Tom Wise is a former MEP who was charged in April 2009 by Bedfordshire Police with false accounting and money laundering in relation to the alleged misuse of parliamentary allowances. His researcher, Lindsay Jenkins, was also charged with the same offences.

3. At the subsequent trial in November 2009 Mr Wise changed his plea to guilty and was sentenced to two years imprisonment. Lindsay Jenkins was acquitted.

The Request

4. The complainant submitted the following request to Bedfordshire Police (the Police) on 3 March 2010:

'Re: the recent case of: R v Lindsay Jenkins, charged 2 April 2009. Trial started Southwark Crown Court 2 November 2009.

And the related case of; R v Thomas Wise

May I please have copies of the following;

- 1) Correspondence, including emails and telephone transcripts between Beds Police and the following:

Ministry of Justice

The Crown Prosecution Service (CPS)

Director of Public Prosecutions (DPP)

OLAF [The European Anti-Fraud Office]

Eurojust

Europol

Any other UK or EU official body

- 2) Number of visits by Beds police officers to Brussels and / or Strasbourg; total length of such visits; purpose of each visit.
 - 3) Estimated costs incurred by Beds police in bringing the prosecution against Lindsay Jenkins'.
5. The Police contacted the complainant on 29 March 2010 and explained that before it could comply with either of the obligations contained at sections 1(1)(a) and 1(1)(b) of the Act it needed to extend the time it needed to consider the public interest test.
 6. On 6 May 2010 the Police contacted the complainant again and explained that it had completed its consideration of the public interest

test. In respect of request 1 the Police confirmed that it held information falling within the scope of this request but it considered it to be exempt from disclosure on the basis of the exemptions contained at sections 30(1)(a) to (c) of the Act and that in all the circumstances of the case the public interest favoured maintaining the exemptions. In respect of request 2 the Police confirmed that one trip was made for two days by one officer and the purpose of the visit was evidence gathering. In relation to request 3 the Police explained that it did not have a central recording system for the costs of each investigative operation it conducted and therefore it believed that it did not hold information in respect of this request.

7. The complainant contacted the Police on 13 May 2010 and asked for an internal review into the handling of his requests to be carried out. In asking for this review the complainant argued that the public interest was served by disclosure of the information he had originally asked for.
8. The Police informed the complainant of the outcome of the internal review on 1 June 2010. The review upheld the responses set out in the refusal notice.
9. Following the intervention of the Commissioner, details of which are set out below, the Police contacted the complainant again on 14 March 2011 and provided him with one document which fell within the scope of his request but which it did not consider to be exempt.

The Investigation

Scope of the case

10. On 14 June 2010 the complainant contacted the Commissioner to complain about the Police's handling of his requests. The Commissioner subsequently contacted the complainant and informed him that it was his understanding that this complaint focused solely on the Police's handling of request 1, that is to say the decision to withhold the information falling within the scope of this request on the basis of the exemptions contained at sections 30(1)(a) to (c). The Police's handling of requests 2 and 3 therefore do not fall within the scope of this case.

Chronology

11. The Commissioner contacted the Police on 2 December 2010 and asked to be provided with copy of the information falling within the scope of the request which is the focus of this complaint. The Commissioner also asked the Police to confirm which of the exemptions contained at

- sections 30(1)(a) to (c) it was relying on to withhold this information along with detailed submissions to support their application.
12. The Police responded on 12 January 2011 and confirmed that the exemption it was relying on was that contained at section 30(1)(a)(i) and provided detailed submissions to support its reliance on this exemption. The response did not include a copy of the requested information.
 13. The Commissioner contacted the Police again on 19 January 2011 and repeated his request to be provided with the requested information.
 14. The Police provided the Commissioner with this information on 8 February 2011. Within this information was a newspaper article taken from the 'News of the World' which the Police's response indicated that it had not sought to withhold.
 15. The Commissioner contacted the Police again on 4 March 2011 and explained that if it was not seeking to rely on an exemption to withhold this newspaper article it needed to provide the complainant with a copy of it. This was provided to him on 14 March 2011.

Analysis

Exemptions

Section 30 – investigations and proceedings conducted by public authorities

16. Section 30 is a class-based exemption. Therefore in order for it to be engaged there is no need for a public authority to demonstrate any level of prejudice should the requested information be disclosed, simply that the information is held for the purposes specified in the relevant part of the exemption which has been cited.
17. In this case the Police relied upon section 30(1)(a)(i) which states that:

'Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

 - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained -
 - (i) whether a person should be charged with an offence'

18. This exemption can only be cited by public authorities with the powers to conduct investigations of the kind specified in this subsection. The exemption can only apply to information which is held for a specific or particular investigation, not for investigations in general. The phrase 'at any time' means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
19. In this case the Commissioner is satisfied that the investigation in question was a criminal investigation into an allegation of fraud and money laundering. As the public authority in this case is a police force, the Commissioner is satisfied that it has powers to conduct investigations of this kind.
20. However, section 30(1) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the Act and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of maintaining the exemption

21. The Police explained that this investigation was the first successful prosecution of an MEP and involved groundbreaking initiatives; therefore disclosure of information would affect the ability to carry out this type of law enforcement in the future.
22. Disclosure of information would reveal collaborative investigation methods and therefore hinder the prevention and detection of this crime in the future.
23. The partnership approach between the Police, EU bodies and the CPS would be compromised by revealing communications gathered for the purpose of an investigation.
24. At the time of the request a de-brief had been arranged between the Police and OLAF regarding this investigation in order to put forward lessons learned and a best practice model. To disclose information prior to this de-brief being completed would significantly harm the partnership approach and risk jeopardising the ability to conduct future investigations.

Public interest arguments in favour of disclosing the requested information

25. The Police noted that the information related to a high profile police investigation concerning the use of public funds and as such there was

a legitimate public interest in openness and accountability regarding this investigation. The Police acknowledged that given that the misuse of such funds had apparently been unnoticed for approximately five years heightened this legitimate interest. The Police also noted that disclosure could inform the public as to how it worked with other law enforcement bodies, especially those in Europe.

Balance of the public interest arguments

26. When considering the application of s30(1), the Commissioner believes that consideration should only be given to protecting what is inherent in the actual exemption – the effective investigation and prosecution of crime - which requires the following:
- the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
 - the maintenance of independence of the judicial and prosecution processes;
 - preservation of the criminal court as the sole forum for determining guilt;
 - allowing the investigating body space to determine the course of an investigation; and
 - information that deals with specialist techniques.
27. With the above underpinning the consideration of 30(1), when weighing up the public interest in relation to the exemption the following factors (amongst others) should be considered:
- the stage or stages reached in any particular investigation or criminal proceedings;
 - whether and to what extent the information has already been released into the public domain;
 - the significance or sensitivity of the information; and
 - the age of the information.
28. At the time of the complainant's request the criminal proceedings in relation to both of the individuals named in the request had been completed with Tom Wise receiving a custodial sentence and Lindsay Jenkins being acquitted. The exemption does not therefore need to be maintained to protect an open investigation a fact which would arguably have added significant weight to the public interest in withholding the information.
29. The Commissioner recognises that there was a notable amount of media coverage concerning the prosecution of Mr Wise. However the Commissioner does not believe that such coverage resulted in the

- content of the withheld information, such as the witness details and correspondence between law enforcement agencies, being placed into the public domain. The public interest in maintaining the exemption is therefore not undermined by the availability of any information already in the public domain.
30. With regard to the significance and sensitivity of the information the Commissioner notes the argument made by the Police that, given the novel nature of this prosecution, new working practices and techniques needed to be developed between the Police and OLAF. The Police argued that such developments will provide the basis for other such individuals to be investigated by their own host state in the future. In light of the new and different nature of the working methods evidenced in the withheld information, the Commissioner accepts that the information can be seen as particularly sensitive and thus this adds weight to the public interest in maintaining the exemption.
 31. However, the Commissioner believes that precisely because the withheld information is of such significance, this also adds weight to the public interest in disclosing the information because this information could, because of the novel nature of the case, prove to be particularly informative to the public. In light of this the Commissioner believes that the arguments surrounding openness and transparency need to be given notable weight.
 32. With regard to the age of the information the Commissioner notes that at the time of the request the related trial had only been completed six months previously. Thus the likelihood of prejudice occurring to future investigations was not insignificant given the very recent nature of the investigatory techniques. Furthermore, the Commissioner accepts the point made by the Police that at the time of the request a 'de-brief' had had not taken place and thus to some, albeit a limited extent, there is a public interest in maintaining the exemption given that the information is still of some currency. That is to say the Commissioner accepts that disclosure of information before the Police had de-briefed OLAF could harm relations between the two bodies.
 33. Having considered all of the circumstances of this request, the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In reaching this conclusion the Commissioner has placed particular weight on the novel – and recent - nature of the investigation to which the requested information relates and thus the significant likelihood that disclosure of the information would have on prejudicing future investigations of a similar nature.

Procedural Requirements

34. Section 10(1) of the Act requires a public authority to respond to a request within 20 working days following the date of receipt. If a public authority wishes to rely on an exemption to refuse to provide the information requested, in line with section 17(1) it must issue a refusal notice to the applicant within the time period required by section 10(1). Under section 17(3) of the Act a public authority can extend the time it needs to consider the public interest test beyond 20 working days but it still needs to issue a refusal notice citing an exemption stating this within 20 working days of the request.
35. In this case the complainant submitted his request on 3 March 2010 and although the Police responded on 29 March 2010 this response did not state which exemption it was seeking to rely on. The refusal notice citing an exemption was not issued until 6 May 2010, outside the 20 working day time period. This delay constitutes a breach of section 17(1) of the Act.

The Decision

36. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - The requested information is exempt from disclosure on the basis of section 30(1)(a)(i) and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
37. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - The public authority breached section 17(1) of the Act by failing to issue a valid refusal notice within 20 working days of the request.

Steps Required

38. The Commissioner requires no steps to be taken.

Right of Appeal

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 17th day of March 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Time for Compliance

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.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

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."

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct."