

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 August 2011

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

Summary

The complainant asked the Home Office (the “public authority”) to provide information relating to European Arrest Warrants. The public authority stated that it did not hold some of the information and withheld the remainder using the exemptions in sections 23(1) (information supplied by, or relating to, bodies dealing with security matters), 27(1) (international relations) and 35(1) (formulation of government policy) of the Freedom of Information Act (the “Act”). At a very late stage the public authority added section 31(1) (law enforcement).

The Commissioner’s decision is that in relation to part of the request the public authority failed to identify that some information was held. However, it also correctly concluded that further information was either not held or fell outside the scope of the request. He has found that some information was properly withheld under sections 23(1) and 27(1) but that sections 35(1) and 31(1) were not engaged. The complainant is partly upheld.

The public authority’s handling of the request resulted in a breach of certain procedural requirements of the Act as identified in this Notice.

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. According to the Serious Organised Crime Agency ("SOCA")¹:

"The European Arrest Warrant ["EAW"] is the mechanism by which wanted individuals are extradited from one EU member state to another. This can be to face prosecution or to serve a term of imprisonment following an earlier conviction."

"SOCA is one of two Central Authorities in the UK (the other being the Crown Office in Scotland) which manage the receipt of European Arrest Warrants, acting effectively as a gateway between requesting and arresting authorities."

"When SOCA receives an EAW request it will assess its legal validity against the relevant criteria before passing it for action to the appropriate arresting authority – in the UK this is usually the police force in the region where the subject is believed to be."

"When an individual wanted by another member state is believed to be in the UK, an EAW will be submitted to SOCA for it to start the extradition process. SOCA will issue a certificate validating the warrant... A copy of the warrant, the certificate and any intelligence concerning the person's location is forwarded to the appropriate organisation, usually a police force, in order that an arrest can be made."

3. The following links provide some background information about European Arrest Warrants:

<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldecom/156/156.pdf>

http://ec.europa.eu/justice/policies/criminal/extradition/docs/com_2011_175_en.pdf

¹ http://www.soca.gov.uk/search?q=eaw&option=com_googlemini

4. According to the National Police Improvement Agency's website²:

"The Schengen Information System is currently in use within Europe helping law enforcement agencies work closer together to combat international crime and improve safety in the EU".

And

"Schengen Information System II - Is a European data system that holds alerts on wanted and missing persons, stolen vehicles and certain categories of property. The link to this will be a major step forward for UK forces... Schengen Information System II (SIS II) is currently in development".

The request

5. On 26 July 2010 the complainant made the following information request:

"In a written answer dated 19 November 2008 to a question from Chris Huhne MP, the Home Secretary stated: "It is not possible from current systems to provide [EAW-related] data broken down into British and non-British nationals, nor into type of offence. SOCA is putting in place a new database to hold this information.

We understand this database is now in place and that it holds information which it receives from the Crown Prosecution Service and from both the Metropolitan Police and more recently regional police forces (since they became responsible in April 2009 for processing EAWs received by the UK, in respect of defendants living in their areas). Accordingly we ask the Home Office to provide the following information.

- 1. How many EAWs were issued to the UK, broken down by issuing EU member state, in the years 2004 – 2010? How many of these were for (i) UK nationals and (ii) non-UK nationals?*
- 2. How many EAWs were issued by the UK in the years 2004 – 2010? How many of these were for (i) UK nationals and (ii) non-UK nationals?*

² <http://www.npia.police.uk/en/9619.htm>

3. *How many people were surrendered from the UK under the EAW regime in the years 2004-2010 and to which EU member states?*
4. *How many people were surrendered to the UK from each EU member state under the EAW regime in the years 2004-2010?*
5. *What percentage of the EAWs issued to and by the UK in the years 2004 – 2010 were in respect of serious organized crime or terrorism offences?*
6. *What representations have been made to Poland or Lithuania regarding the high number of EAWs issued by them over the last five years?*
7. *What has been the total cost of the EAW regime to the UK over the years 2004-2010 (if conclusive figures are not available please provide any available estimates)?*
8. *What proportion of these costs have been incurred by:*
 - (i) *the Home Office;*
 - (ii) *the Serious Organised Crime Agency;*
 - (iii) *the Crown Prosecution Service;*
 - (iv) *the Metropolitan Police;*
 - (v) *regional police forces;*
 - (vi) *Her Majesty's Courts Services;*
 - (vii) *National Offending Management Service?*

or using any other available breakdown of costs.

9. *How many of the persons surrendered to the UK under an EAW over the period 2004 – 2010 were subsequently (a) released before trial (b) acquitted at trial and (c) given a conditional discharge or a suspended prison sentence?*

10. *Please provide the most recent reports available containing information the projected future increase in EAWs received by the UK?"*

6. On 18 August 2010 the public authority wrote to the complainant advising that it needed further time to respond as it was considering the public interest in the exemption at section 27 of the Act; it advised that it would respond by 22 September 2010. On 21 September 2010 it wrote again saying that it was now also considering the public interest in the exemptions at sections 35 and 36 of the Act; it said that it would

respond by 21 October 2010. On 20 October 2010 it advised that it was still considering sections 27 and 35 and would respond by 10 November 2010.

7. On 3 November 2010 the public authority sent its response. It stated that it did not hold any information in respect of parts (1) to (5) and (7) to (9) of his request. It further clarified that, in respect of parts (1) to (5), if held this information would be exempt by virtue of section 23(1) as it related to SOCA. It stated that it did hold information in respect of part (6) of the request but that this was exempt by virtue of section 27(1)(a), and that information held in respect of part (10) was exempt by virtue of section 35(1)(a). It provided links to some statistical information.
8. On 22 December 2010 the complainant sought an internal review.
9. On 27 January 2011 the public authority provided an internal review. It changed its position in respect of parts (1) to (5) of the request stating that it did hold this information but that it was exempt by virtue of section 23(1). The rest of its views remained unchanged.

The investigation

Scope of the case

10. On 1 March 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. During correspondence with the Commissioner, he accepted that no information was held in respect of parts (8) and (9) of his request and removed these from the scope of the investigation. However he asked the Commissioner to consider the withholding of information in respect of parts (1) to (5) of his request, the application of section 27 to part (6) of his request, whether any information was held in respect of part (7) of his request and whether or not section 35 applied to part (10) of his request.
11. During the investigation, the public authority found that some of the information in respect of part (6) of the request, which had previously been withheld under section 27 of the Act, was suitable for disclosure. This was provided to the complainant and is therefore not further considered. It also cited section 23 in respect of a small amount of the information falling within this part of the request.

12. The complainant brought a Report entitled "*Impact Assessment of Schengen amendments [sic] to Extradition Act 2003*", dated 16 December 2008 ("Report 1")³, to the Commissioner's attention. The existence of this published document was his justification for not accepting that information was 'not held' in respect of part (7) of his request. When questioned the public authority advised the Commissioner:

"The Home Office previously cited no information held. However, the published Home Office report Impact Assessment of Schengen amendments to Extradition Act 2003 (16 December 2008) meant that the department should have cited section 21 for this, for which the department apologises for any confusion".

13. Although the public authority does not appear to have initially been aware of the fact, Report 1 is clearly in the public domain and evidences that it did in fact hold information falling within the scope of part (7) of the request. When asked about the source of any cost-related information held, the Commissioner was advised by the public authority that the source of all such information is SOCA and that this information is therefore exempt by virtue of section 23. As the public authority has now confirmed that further information is in fact held which falls within the scope of part (7) of the request, the Commissioner has considered below whether this is suitable for disclosure.

14. In respect of part (10) of the request, the public authority cited section 35(1). During the investigation, it advised the Commissioner that this exemption had been applied to Report 1 as well as to some work being undertaken as a result of a review (the "Review") announced by the Home Secretary on 7 September 2010. The public authority subsequently advised the Commissioner:

"... in relation to this current review announced by the Home Secretary on 7 September 2010, as the original FOI request was received on 26 July 2010 – and the current exercise cited above was not announced until 7 September 2010 – it is technically out of scope of the original request. However, the department was attempting to keep the complainant fully abreast of current events for completeness".

15. The Commissioner will not further consider the applicability of section 35(1) to Report 1 as the document is already in the public domain. Nor

³<http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/ia-police-crime-bill-08/ia-schengen-amendments?view=Binary>

will he consider any information concerning the Review as this clearly would post-date the request.

16. At a very late stage in the investigation the public authority brought the Commissioner's attention a further report ("Report 2"), falling within the scope of part (10) of the request. It advised him that Report 2 had been identified at the time the request was received and that it had been withheld in full under section 35(1), although unfortunately it had not been provided to the Commissioner when he commenced his investigation.
17. In correspondence with the Commissioner it went on to say that some of Report 2 was already available as it formed part of Report 1, and, as well as section 35(1), it also wished to cite sections 23(1) and 31(1) for some of the content. The Commissioner agrees that some of the information is already available as a result of the publication of Report 1 so he will not consider this information further. However, he will consider below whether or not the remainder of Report 2 should be disclosed.

Chronology

18. On 30 March 2011 the Commissioner contacted the complainant to clarify the extent of his complaint. On 12 April 2011 the complainant provided a response.
19. On 21 April 2011 the Commissioner commenced his enquiries with the public authority.
20. Following various queries, the public authority provided the Commissioner with report 2 on 19 August 2011.

Analysis

Substantive procedural matters

Section 1 – general right of access

Part (7) of the request

21. Section 1(1) of the Act states 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."*

22. Section 1(1) therefore creates two obligations on the public authority: the duty to confirm or deny to the applicant whether the information is held, and the duty to communicate the information to the applicant.
23. The public authority originally stated that it holds no information in respect of part (7) of the request, which relates to the total cost (or an estimate of such costs) to the UK of what the complainant terms "*the EAW regime*". The public authority was mistaken and the complainant provided evidence to demonstrate that a Report had been written and published. As shown above, the public authority accepted this point. In failing to identify that this was held it breached section (1)(1).
24. When asked by the Commissioner whether there was any background information used in compiling this Report which may fall within the scope of the request, the public authority advised that this was all caught under the exemption in section 23(1) of the Act as it was provided by or related to SOCA. This has therefore been considered below.

Exemptions

Section 23 - information supplied by, or relating to, security bodies

25. This exemption has been cited in respect of parts (1) to (5) of the request. During the Commissioner's investigation, a further paragraph of information was identified in respect of part (6) of the request, as was, much later, background information in relation to Report 1 which was identified as falling under part (7) of the request. It has also been cited in respect of some parts of Report 2 which falls within part (10) of the request. The exemption states that:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)".

26. The full list of the bodies included in section 23(3) is included in the legal annex attached to this notice. The relevant body in this case is SOCA, the successor to NCIS, which falls under the remit of section 23(3).

27. This exemption is not subject to the public interest, meaning that if the information in question conforms to the class specified in this exemption, it is exempt from disclosure.
28. The Commissioner has produced a specialist guide regarding this exemption⁴. Within this guidance he states that the exemption applies to any information which:
- was directly supplied to the public authority by one of the specified security bodies;
 - was indirectly supplied by one of the specified security bodies; or,
 - relates to one of the specified security bodies.
29. In respect of parts (1) to (5) of the request, the public authority has not provided the Commissioner with the information that it has withheld on the basis of section 23(1). In the circumstances of this case, and given the sensitive nature of the information withheld on the basis of section 23(1), rather than examine such information himself the Commissioner is prepared to conclude that section 23(1) has been correctly relied upon on the basis of the following considerations. First, in a letter sent to him dated 20 May 2011, the Head of the Judicial Co-Operation Unit confirmed that she had examined the information in parts (1) to (5) of the request and that it clearly fell within the scope of the exemption contained at section 23(1), as all of it was either received from or directly related to one of the relevant security bodies. Secondly, the Commissioner here notes that the EAW function is 'owned' by SOCA. He therefore accepts that any information concerning EAWs that the public authority holds is likely to be only as a result of its involvement with SOCA.
30. In respect of the further paragraph identified in respect of part (6) of the request, having viewed this, the Commissioner is satisfied that the exemption is engaged. The Commissioner is also satisfied that any background information which has been collated in connection with Report 1, thereby falling within part (7) of the request, will have been sourced from SOCA and is therefore properly exempt.
31. In respect of part (10) of the request, an annex has been withheld from Report 2 which can clearly be seen to relate to SOCA.
32. The Commissioner therefore accepts that, where cited, this exemption is engaged and, accordingly, that the requested information is exempt from disclosure.

⁴http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/S23_SECURITY_BODIES_V1_FOP097.ashx

Section 27 – international relations

33. Section 27(1)(a) has been cited in respect of part (6) of the request. Information is exempt under this section if its disclosure would or would be likely to prejudice:
“... relations between the United Kingdom and any other State”.
34. Therefore, to engage the section 27(1) exemption, it is necessary for the public authority to demonstrate that disclosure of the information would, or would be likely to, cause some relevant prejudice.
35. In the Commissioner's view, information likely to prejudice the interests of the UK abroad will include information held by a public authority, which if disclosed, would harm UK interests in relation to an international arrangement, or in its dealings with another state or non-UK organisation. He considers the interests of the UK abroad and the international relations of the UK would cover a wide range of issues relating to, for example:
- communications between public authorities in the UK and other states, international organisations or organs of other states;
 - the exchange of political views between states;
 - UK policy and strategic positioning in relation to other states or to international organisations;
 - diplomatic matters between states;
 - international trade partnerships; and
 - international funding matters.
36. The public authority has advised the complainant:
“I can confirm that there have been discussions in both the UK and Poland, as well as in EU fora regarding the large numbers of EAWs issued by Polish authorities...”.
37. Therefore the public authority has already confirmed that it holds information that relates to representations made to another State. In its internal review it stated that prejudice *would* occur if this information were disclosed. The Commissioner must therefore next consider whether releasing the information *would* prejudice relations.
38. In considering the nature of prejudice which this exemption is designed to prevent, the Commissioner is guided by the following comments of the Information Tribunal (*Campaign against the Arms Trade v The Information Commissioner and Ministry of Defence* [EA/2006/0040]), in respect of section 27:

"...we would make clear that in our judgment prejudice can be real and of substance if it makes relations more difficult or calls for particular diplomatic response to contain or limit damage which would not otherwise have been necessary. We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in terms of quantifiable loss or damage."

39. The Commissioner notes that the withheld information consists of email chains entitled 'bilateral consultations', covering discussions between staff at the public authority and abroad. Having considered the withheld information the Commissioner agrees with the public authority's assertion that its release would prejudice relationships with another State. That is, its release would, in all probability, require a *"particular diplomatic response to contain or limit damage which would not otherwise have been necessary"*. The exemption is therefore engaged.
40. Section 27 is a qualified exemption and therefore is subject to a public interest test under section 2(2)(b) of the Act. Section 2(2)(b) provides that where a qualified exemption applies, information shall only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure. Laid out below are public interest arguments put forward by the public authority and the complainant in respect of this case.

Public interest arguments in favour of disclosing the requested information

41. The public authority acknowledges that there is: *"considerable public interest in UK engagement with European partners around proportionality in the issuing of EAWs"*.
42. The complainant has also put forward the following arguments in favour of disclosure:

"it is in the public interest to release information which shows what steps the Home Office has taken to mitigate the wasted costs and human impact of EAWs issued disproportionately for minor offences".

"We do not see how the provision of the information could prejudice the UK's relationship with other States or the UK's interests abroad. Almost all EU Member States publish detailed statistics on their use of the EAW via the European Council's questionnaire on the operation of the EAW. It is therefore no

revelation that Poland and Lithuania issue more EAWs than other Member States. Indeed, Poland has expressed its desire for a proportionality test to be added to the Framework Decision on the EAW so as to curb the number of warrants it issues⁵”.

Public interest arguments in favour of maintaining the exemption

43. The public authority advised the complainant that:

“The effective conduct of international relations depends upon trust and confidence between Governments. This trust allows for a free and frank exchange of information on the understanding that it will be treated in confidence. If the United Kingdom does not respect such confidences, its ability to protect and promote UK interests, and in this case international judicial co-operation, will be hampered. We recognise that there is public interest in his particular subject; however, for the reasons mentioned above, we consider that in this case the public interest in maintaining this exemption outweighs the public interest in disclosure”.

44. In correspondence to the Commissioner the public authority also made reference to the Commissioner's *Awareness Guidance No. 14⁶* which states:

“Different types of relationships, levels of openness and negotiating positions will exist between the UK and other states or international organisations. The interests of the UK abroad will vary from state to state, as will the relationships that have been, or will be established.

The relationships will also vary over time. Changing events affecting international relations and the timing of the disclosure of information will also influence the application of the exemption to requests for disclosure under section 27.”

45. In respect of this extract it stated:

“With this in mind it is necessary to afford careful consideration to the expectations that exist with specific European partners

⁵ European Commission Meeting of Experts: Implementation of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant – The issue of proportionality, 5 November 2009

⁶http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_14_-_international_relations.pdf

regarding the confidentiality of discussions they hold with the UK, particularly with respect to issues of ongoing political sensitivity”.

46. Further arguments in favour of withholding the information were:

“... it provides frank analysis of UK cooperation with European partners on the subject of EAWs. To this end there is a very real concern that the release of this candid and in many respects sensitive information into the public domain might prejudice the UK's relation with international partners: undermining the relationships, and agreements, that the UK has endeavoured to build.

This could affect the UK government's credibility in future international negotiations, its ability to promote its interests abroad and its influence in establishing robust binding international agreements. This concern is seen to be more than a simple hypothetical possibility, but rather a significant risk based on an assessment of the expectations of certain of the UK's international partners, who may be less inclined to engage with the UK in the future if they thought that information they had provided would be disclosed into the public domain”.

Balance of the public interest arguments

47. As identified in his *Awareness Guidance* referred to above, the Commissioner recognises the following factors, all of relevance to this case, which support disclosure of the requested information:

- Furthering the understanding and participation in the public debate of issues of the day.
- Promoting accountability and transparency by public authorities for decisions taken by them.
- Promoting accountability and transparency in the spending of public money.
- Allowing individuals, companies and other bodies to understand decisions made by public authorities affecting their lives.
- Bringing to light information affecting public health and safety.

48. The Commissioner also notes that information about EAWs has already been made available by the European Commission itself. He considers that this information fulfils, to some extent, all the public interest points mentioned above, albeit that he accepts that the specific information requested by the complainant is not available.

49. The Commissioner appreciates the importance generally of maintaining good relations with other international organisations, particularly in relation to international development issues.
50. In balancing its public interest considerations the public authority advised that:

"... whilst there is considerable public interest in UK engagement with European partners around proportionality in the issuing of EAWs, such is seen to be outweighed by the necessity of safeguarding the international cooperation that has made possible the formulation of such agreements in the first instance".

51. The Commissioner is of the view that if releasing the requested information were to cause any offence to the State concerned this would make relationships with that State more difficult in the future. He considers this to be a particularly strong public interest argument for maintaining the exemption.
52. Having balanced the opposing factors in this case, the Commissioner considers the public interest in maintaining the exemption in section 27(1)(a) outweighs the public interest in disclosure. The Commissioner therefore finds that the public authority acted correctly in withholding information in reliance on this exemption.

Section 35 – formulation of government policy

53. Section 35(1)(a) is being considered in respect of Report 2, which falls under part (10) of the request. Some of this has already been released in Report 1, namely a list of bodies involved and a table of costs. The remainder has been withheld entirely under this exemption (and partly under sections 23 and 31 too). This section provides that –

"Information held by a government department ... is exempt information if it relates to-
(a) the formulation or development of government policy".

54. The exemptions in section 35(1) apply where the information 'relates' to the matters set out in the sub-sections. On the basis of decisions of the Information Tribunal, the Commissioner accepts that the term 'relates to' in section 35(1) can safely be interpreted broadly.
55. The exemption is a class-based exemption rather than a prejudice-based one. That is to say, in order for the exemption to be engaged the public authority does not need to demonstrate that any specific

prejudice or harm would flow from the disclosure of the information in question.

Is the exemption engaged?

56. The disputed information in this case, Report 2, encompasses the government's views about the rising pressures of EAWs. The information is clearly held by a government department, therefore the further matter to be addressed is whether the information "*relates to the formulation or development of government policy*".

57. Although it only became apparent at a very late stage, both the refusal notice and internal review did consider this document; Report 2 was initially withheld in its entirety under this exemption only.

58. In its refusal notice the public authority advised the complainant:

"Whilst the Home office does hold this information, we judge that its release now would harm the development of policy for EAWs, as we are currently continuing to work with a range of government partners to refine the policy, which will be based, in part, on the forecasts contained and discussed in this report. To disclose it at this stage would be likely to inhibit the development of this Government policy whilst work with partners is continuing. At this time, we need space within Government to discuss in private options for improving the policy without encouraging wider debate and speculation about the direction the policy [sic] before options have been explored within Government".

59. In its internal review the public authority also stated:

"As was explained to [name removed] in the response of 6 December, UK policy on EAWs is currently under review. To this end on 7 September 2010 the Home Secretary announced a review of five key areas of extradition, including the operation of the EAW, expected to report in late summer 2011.

Given then that part 10 of [name removed]'s request seeks disclosure of the most recent reports and projections around EAWs it is reasonable to conclude that this information would engage the exemption under section 35(1)(a) of the Act as the policy in question is subject to review and development".

60. It is of note that Report 2 is dated February 2009, therefore pre-dating the request by almost 18 months – and the Home Secretary's announcement by more than 18 months.

61. In accordance with the public authority's citing of the sub-section of the exemption in this case, the Commissioner has considered the extent to which the withheld information relates to the formulation or development of government policy.
62. The Commissioner has had sight of the document. It is written in the format of "*Context, Options and Recommendations*". It does not in itself specify that its intention is one of actual policy provision, rather it is exploring the possible impact of the introduction of a new version of the SIS II (see Background above) which is considered to be likely to have an impact on the volume of EAWs and the costs involved.
63. In the Commissioner's view, the document at issue is, in its own wording, "*a workable model*" for dealing with EAWs. There is no reference to policy anywhere within the document, either existing or intended. It looks at the possible impact of SIS II, and the impact that this may have for the bodies concerned. The Commissioner does not consider that the public authority has clearly explained how its section 35 arguments relate to the withheld information, for example, how the findings will feed into policy development or provide direction for ongoing policy decisions. Similarly, he has not been provided with any evidence as to how any party has relied on the document for developing or refining policy or how gaps, if any were identified, were acted upon by policy makers. The only reference the public authority made to actual policy is the comment cited above which refers to a statement made by the Home Secretary more than 18 months after Report 2 has been written.
64. The limited arguments put forward by the public authority are not sufficient to justify reliance on the exemption. The Commissioner does not accept that at the time of the request Report 2 was a document relating to the formulation or development of policy. It follows that he does not find the exemption engaged in respect of Report 2.
65. As the Commissioner has not found the exemption engaged, he has not gone on to consider the public interest test.

Section 31 – law enforcement

66. At a late stage in the investigation the public authority applied section 31(1)(a)(b) and (c) to some information contained in Report 2.

67. This exemption 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,
(b) the apprehension or prosecution of offenders,
(c) the administration of justice.”.

68. Consideration of this exemption is a two-stage process. Firstly, the exemption must be engaged as a result of prejudice relevant to the exemption being at least likely to occur. Secondly, this exemption is qualified by the public interest. This means that the information should be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

69. In its correspondence to the Commissioner the public authority has only cited the relevant sub-sections of the exemption and then provided a very brief consideration of the public interest test. It has not provided any details about what prejudice it believes would or would be likely to occur were it to disclose the requested information.

70. In the absence of any reason to engage the exemption the Commissioner has read the withheld information. He can see no obvious grounds for engaging this exemption and no obvious evidence of harm which might arise from disclosing the information. Accordingly he concludes that the exemption is not engaged.

Procedural requirements

Sections 1 and 10 - general right of access and time for compliance

71. 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.”

72. Section 10 provides that:

“(1) 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.”

“(3) If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

73. The public authority advised the complainant, within the statutory time limit, that it held some information within the scope of his request. It advised that it was considering the public interest and provided a revised response date; it did so on three occasions.
74. Section 10(3) permits a further time for a response, above the normal twenty working day time limit, for as long as is reasonable in all the circumstances. The Commissioner's *Good Practice Guidance 4* indicates that in no case should this be more than an additional 20 working days, i.e. 40 working days in total.
75. By taking longer than 40 working days to comply with the request the Commissioner finds that it took an unreasonable time to comply. This constitutes a breach of section 17(3) of the Act.
76. Furthermore, in failing to provide information which was disclosable, the public authority breached its obligations under sections 1(1)(b) and 10(1).

The Decision

77. 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:
 - where cited, it correctly applied sections 23 and 27 of the Act.
78. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- in failing to provide a timely response it breached section 17(3);
- in claiming that no information was held in respect of part (7) of the request it breached section 1(1) (Report 1);
- it incorrectly applied section 35(1) to information which was already in the public domain (Report 1);
- it incorrectly applied section 35(1) to information which was outside the scope of the request (the Review);
- it incorrectly applied sections 35(1) and 31(1) to Report 2.

Steps required

79. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- It should provide the complainant with Report 2, other than where the information is properly withheld under section 23. The information which is already published in Report 1, where it also appears in Report 2, should not be removed from Report 2 prior to disclosure.
80. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

81. 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

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

Internal review

83. 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. Having already taken an excessive time to provide an initial response to the complainant, the Commissioner does not consider that there have been any exceptional circumstances to warrant the outcome of the internal review being provided outside the 20 working day guideline. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

84. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk.

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

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 25th day of August 2011

Signed

**Graham Smith
Deputy Commissioner and Director of Freedom of Information**

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

Legal annex

Section 23 - information supplied by or relating to, bodies dealing with security matters

- (1) *Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).*
- (3) *The bodies referred to in subsections (1) and (2) are-*
- (a) the Security Service,*
 - (b) the Secret Intelligence Service,*
 - (c) the Government Communications Headquarters,*
 - (d) the special forces,*
 - (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,*
 - (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,*
 - (g) the Tribunal established under section 5 of the Security Service Act 1989,*
 - (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,*
 - (i) the Security Vetting Appeals Panel,*
 - (j) the Security Commission,*
 - (k) the National Criminal Intelligence Service, and*
 - (l) the Service Authority for the National Criminal Intelligence Service.*

Section 27 - international relations

- (1) *Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*
- (a) relations between the United Kingdom and any other State,*
 - (b) relations between the United Kingdom and any international organisation or international court,*
 - (c) the interests of the United Kingdom abroad, or*
 - (d) the promotion or protection by the United Kingdom of its interests abroad.*