

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2018

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

Decision (including any steps ordered)

1. The complainant has requested a copy of a specific inquiry. The Home Office has withheld the information under section 23(1) (security bodies) of FOIA.
2. The Commissioner's decision is that the Home Office has applied section 23(1) of FOIA appropriately. However, she considers that the Home Office has breached section 17(1) (refusal of a request) of FOIA.
3. The Commissioner does not require the Home Office to take any steps as a result of this decision notice.

Request and response

4. On 16 November 2016 the complainant wrote to the Home Office (HO) and requested information in the following terms:

"I would like to make a request for information listed on the National Archives website as being held by Home Office. I have copied in the details below, as well as the relevant link. Please could you treat this as an FOI if that is helpful otherwise it is simply a researcher's request for archived information which, for some reason or other, is not available in the usual archives location.

<http://discoverynationalarchives.gov.uk/details of C149353>.

Hunter Inquiry: Patrick Meehan's allegation that he warned of George Blake's escape from ...

This record is closed and retained by Home Office."

5. The HO responded on 15 December 2016. It explained that it was withholding the requested information, citing the sections 24 (safeguarding national security) and 31 (law enforcement) exemptions of FOIA. It also explained that it needed to extend the 20 working day time limit as it needed more time to consider to the public interest test.
6. On 19 January 2017 the complainant contacted the HO and asked for a response to her request.
7. On the 9 February 2017 the HO responded, confirming that it was no longer relying section 24 and 31; instead it was relying on section 23(1)(security bodies).
8. Following an internal review the HO wrote to the complainant on 31 March 2017, upholding its application of section 23(1). It explained that section 23(1) was, in effect, subject to a public interest test where information was held in a historical record or file held by the National Archives (TNA) or the Public Records Office, Northern Ireland. It confirmed that although the requested file was listed in the TNA catalogue, it was not available at the TNA, but was retained by the HO.
9. The HO also explained that the complete file HO325/314 was retained under section 3(4) of the Public Records Act 1967 (The Lord Chancellor's Security and Intelligence Instrument). This provides protection when the transfer would create a real risk of prejudice to national security. In addition, the HO explained that information falling within the scope of the section 23 exemption, in this case therefore, was not subject to the public interest test.
10. The HO also confirmed that it considered that section 23 applied to the entire file.

Scope of the case

11. The complainant contacted the Commissioner on 11 April 2017 to complain about the way her request for information had been handled. She explained that the inquiry in question had been published in Scotland and had an ISBN number. She also explained that Lord Hunter and Patrick Meehan were not alive and George Blake was 94 years old

and understood to be living in Russia. The complainant also pointed out that the requested information related to events in 1976 and 1977.

12. The Commissioner will consider the HO's application of section 23(1) and the length of time taken to deal with the request.

Reasons for decision

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

13. Section 23(1) of FOIA 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)."

14. Section 23 is a classed-based, absolute exemption. This means that if information falls with the class of information set out above, then the exemption is engaged. As it is an absolute exemption, it is not subject to any public interest considerations.
15. In order to engage this exemption, a public authority must be able to demonstrate that the relevant information was directly or indirectly supplied by, or relates to, any of the bodies listed at section 23(3) FOIA.
16. The HO has applied section 23(1) to the withheld information. It explained that the withheld information relates to a security body listed in section 23(3).
17. The Commissioner has seen the withheld information in question and is satisfied that it relates to one of the bodies listed in section 23(3). She therefore considers that the section 23(1) exemption is engaged. In addition, in light of the recent Upper Tribunal judgment in *Corderoy and Ahmed v (1) ICO (2) A-G (3) CO* [2017] UKUT 495 (AAC), the Commissioner also considered the issue of disaggregation and does not consider the information within the specific inquiry to which section 23 has been applied can be disaggregated on the principles in *Corderoy*.

Procedural matters

18. The complainant submitted her request on 16 November 2016. Initially the HO withheld the information under sections 24 and 31. However, on 9 February 2017 it confirmed that it was relying on section 23(1).

Section 17 – refusal of a request

19. Section 17(1) states that if a public authority wishes to refuse any part of a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemption(s).
20. The Commissioner considers that HO has breached section 17(1) as it took longer than 20 working days to respond to the complainant, citing the relevant exemption.

Other matters

21. The complainant requested an internal review on 9 February 2017. The HO responded on 31 March 2017.
22. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
23. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
24. The Commissioner is concerned that it took over 20 working days for the HO to complete the internal review.
25. The Commissioner also notes that on 15 December 2016 the HO informed the complainant that it needed to extend the time limit as it needed to consider the public interest test. The HO did not inform the complainant that it was relying on section 23(1) until the 9 February 2017. As a matter of good practice, the Commissioner would have expected the HO to inform that complainant as soon as possible that it was no longer relying on the initial exemptions it had cited.

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.

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

Signed

Mr Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF