

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 November 2009

Public Authority: Thames Valley Police
Address: Oxford Road
Kidlington
Oxford
OX5 2NX

Summary

The complainant made a five part request for information about chemical, biological, radiation and nuclear (CBRN) suits. Some of the information was disclosed, but the remaining information was withheld under the exemptions at sections 24(1) (national security) and 31(1) (law enforcement) of the Freedom of Information Act 2000 (the "Act").

The Commissioner's decision is that the exemption at section 24(1) is engaged and that the public interest in maintaining the exemption outweighs that in disclosure. The exemption at section 31(1) has therefore not been further considered. The complaint is not upheld.

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. The complainant is a member of an organisation¹ which describes itself as:

"... a not-for-profit, independent information service, which works to promote public awareness and foster debate on nuclear disarmament and related safety and environmental issues."

¹ <http://www.nuclearinfo.org/home>

3. The request refers to 'CBRN' suits. These are the 'chemical, biological, radiation and nuclear' protective suits that are worn when dealing with such incidents.

The request

4. On 1 December 2007 the complainant made the following request to this public authority as well as Hampshire Constabulary:

"I would be grateful if you would provide me with the following information:

- *How many CBRN protection suits are held by Thames Valley Police?*
- *At what physical locations are the suits held?*
- *How many CBRN suits are held at Newbury Police Station?*
- *What colour are CBRN suits held by Thames Valley Police?*
- *In what way do the suits indicate that the wearer is a police officer?*

I consider that it is in the public interest for Thames Valley Police to release such information as it will provide an indication of the extent to which the force is equipped to deal with major public emergencies where there may be a CBRN threat."

5. The request was received on the 3 December 2007. On 4 January 2008, the public authority sent its response. It disclosed information in respect of the fourth and fifth bullet points but withheld the remainder under the exemptions at sections 24(1) and 31(1).
6. On 8 February 2008 the complainant sought an internal review. This was sent on 7 April 2008; the public authority maintained its position.

The investigation

Scope of the case

7. On 22 April 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant stated that responses had been received in respect of the last two parts of the request but that the remaining ones had been withheld under the exemptions at sections 24(1) and 31(1). The Commissioner was to consider the following points:

"Whether or not the two police forces followed the law and relevant guidance and gave sufficient consideration to relevant factors when applying a public interest test to disclosure of the information."

"Whether or not the balance of the public interest lies in favour of disclosure, given the relatively local nature of the information requested."

“Whether or not a meaningful internal review took place following my appeal, and whether the arguments in my appeal letters have been adequately considered by the police forces.”

8. Other arguments to support the complainant’s view that the information should be released were also provided.
9. During the course of the Commissioner’s investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - a response was provided in respect of the second bullet point and the complainant withdrew his complaint in this regard;
 - a response was provided in respect of the third bullet point and the complainant withdrew his complaint in this regard.
10. The Commissioner is therefore only considering the non-disclosure of the first bullet point of the information request, i.e. the total number of CBRN suits held by the public authority.

Chronology

11. On 30 March 2009 the Commissioner wrote to the complainant to advise him that he was ready to commence his investigation and asked him to confirm the extent of his complaint.
12. The complainant’s response was received on 14 April 2009.
13. On 16 April 2009 the Commissioner commenced his enquiries with the public authority. He sought a response within 20 working days.
14. On 11 May 2009 the public authority asked the Commissioner for a time extension. It clarified that this was required because issues raised by the Commissioner had been referred to the National CBRN Centre for further guidance and these were outstanding. The Commissioner agreed.
15. The public authority’s substantive response was sent on 19 June 2009.
16. As a result of this response the Commissioner asked the public authority to write to the complainant again in respect of the second and third parts of his request. It did so on 30 June 2009.
17. On 8 July 2009 the Commissioner wrote to the complainant to ascertain whether or not the latest response made by the public authority would satisfy these parts of his request. On 29 July 2009 the complainant wrote to the Commissioner to advise that he had not received a copy of the public authority’s letter. A copy was sent.

18. On 4 August 2009 the complainant confirmed that he was happy to withdraw his complaint in respect of these parts of his request. The Commissioner advised the public authority accordingly.

Findings of fact

19. On 20 March 2003 the Secretary of State for the Home Department made the following comments in the House of Commons²:

“The emergency services now have more equipment and trained officers to enable them to respond to a release of CBRN material and this has been accompanied by the publication of specific protocols for dealing with this kind of attack. For example, under a £5 million programme, the Department of Health has provided 360 mobile decontamination units; the CBRN Police Training Centre has been established at Winterbourne Gunner and the police now have 2,350 officers trained and equipped in CBRN response.”

20. On 13 February 2004 the Deputy Prime Minister was asked how many nuclear, biological, chemical protective suits are available to (a) emergency services and (b) military personnel in the London area³. The following reply was given:

“The London Ambulance Service currently has 400 Personal Protective Equipment (PPE) suits immediately available for use in response to CBRN (Chemical, Biological, Radiological or Nuclear) incidents. The Service plans to increase the number of suits available to 1,400 during the next financial year.”

“The London Fire Brigade has 1,500 gas-tight suits immediately available for use in response to CBRN incidents, as well as for day-to-day operations.”

“The Military in London has approximately 1,000 PPE suits immediately available.”

“The total number of CBRN trained police officers nationally is now over 5,000. This is in line with the Association of Chief Police Officers' desired level of training to ensure that police forces nationally have the necessary resilience to deal with a CBRN incident. It would not be appropriate, on security grounds, to give more specific information regarding the CBRN response capability in each police force.”

21. The following information is available on the Home Office website⁴:

“By April 2005, more than 7000 UK police officers had been trained at the [Police National CBRN] centre and equipped to deal with CBRN incidents.”

² <http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030320/wmstext/30320m02.htm>

³ http://hansard.millbanksystems.com/written_answers/2004/feb/13/protective-suits

⁴ <http://security.homeoffice.gov.uk/cbrn-resilience/equipping-emergency-services/>

22. An article in the Daily Telegraph from 30 December 2006⁵ gives the following figures:

“Currently, 7,000 of the 140,000 officers in England and Wales, around five per cent, are trained to deal with ‘CBRN’ incidents.”

23. A further question was raised in the House of Commons on 22 July 2008, seeking to ascertain how many police have been trained to deal with chemical, biological, radiological and nuclear attacks since July 2006; and how many police officers in total are so trained⁶. The following response was given:

“Since July 2006, approximately 1,998 police officers have been trained to deal with chemical, biological, radiological and nuclear attacks...”

*“... The most recent audit carried out by the Police National CBRN Centre (mid-April 2008) recorded 8,124 fully trained, equipped and deployable CBRN police officers in the UK.”**

(*The Commissioner notes that this information was put into the public domain at a date which post-dates the request).

Analysis

Exemptions

Section 24(1) – National Security

24. Section 24(1) states: *“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”*
25. In the case of *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045) the Information Tribunal noted that it was unable to find an exhaustive definition of ‘national security’ in either statute or judicial decisions, but it referred to a House of Lords decision (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153) which made a number of observations on the issue:
- ‘national security’ means the security of the United Kingdom and its people;
 - the interests of national security are not limited to action by an individual which can be said to be ‘targeted at’ the United Kingdom, its system of government or its people;
 - not only military defence, but the protection of democracy and the legal and constitutional systems of the state, are part of national security;

⁵ <http://www.telegraph.co.uk/news/uknews/1538149/Police-seek-suits-to-cope-with-dirty-bomb.html>

⁶ <http://www.parliament.the-stationery-office.com/pa/ld200708/ldhansrd/text/80722w0003.htm>

- action against a foreign state may be indirectly capable of affecting the security of the United Kingdom;
- reciprocal cooperation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

Required to safeguard

26. The Commissioner takes the view that, for exemption to be 'required', the requested information must relate to national security, and there must be evidence that its disclosure would cause specific and real threats to national security. Furthermore, the Commissioner considers that there must be a pressing need for the information to be exempt.
27. Having considered the close link between information rights and human rights, the Commissioner considers that it is also appropriate to consider the case law on Article 8(2) of the European Convention on Human Rights, which states:
- "There shall be no interference by a public authority with the exercise of this right except such as...is necessary in a democratic society in the interests of national security..."*
28. The European Court of Human Rights has interpreted 'necessary' as "not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'". Accordingly, in the view of the Commissioner, necessity is less than absolutely essential but more than merely useful.
29. The public authority has stated that:
- "... to provide the number of suits owned by the force would indicate to a terrorist the tactical make-up of a force. This information, if acquired on a national level, could result in the law enforcement capabilities of individual forces being compromised. If a particular force has a very low number, disclosure could potentially lead to that force becoming vulnerable and leaving it open to possible terrorist attacks thereby compromising the prevention or detection of crime. This could also compromise our national security as it would be detrimental to UK safety and resilience in the fight against terrorism."*
- "The safety of the community is of paramount importance and any disclosure of police tactics, however minor, will benefit the terrorist, who will be able to plan more effectively and increase the probability of a successful attack resulting in loss of life, serious injury and severe damage to property. This is particularly relevant where the terrorist is prepared to sacrifice his or her own life to achieve a goal of maximum loss of life"*
30. In further correspondence with the Commissioner the public authority also advised that:

“The current terrorist threat against the UK is ‘Severe’ – meaning that a terrorist attack is highly likely”. As the Government and representatives of the Security and Intelligence Services have made clear, this includes the possibility of an attack using chemical, biological, radiological or nuclear (CBRN) materials or devices.”

31. During his investigation the public authority further advised the Commissioner:

“Information of the type sought, if released to an individual could be made generally available in the public domain. There is of course, a public interest in knowing in general terms what provision the UK has in place to protect the public in the event of a terrorist attack. However, detailed information relating to the precise operational capability of the police or other emergency services in any given location, would be of assistance to terrorists for the purposes of planning the location and type of potential attacks, either within a specific region or nationally”.

32. Having considered the withheld information and the public authority’s comments, the Commissioner is satisfied that retention of the information is ‘*required to safeguard*’ national security, since there is a specific and direct application to which such information might be put which could potentially be damaging to national security. The information therefore has the necessary quality to fall within the definition of section 24(1).
33. Since section 24 is a qualified exemption it is subject to a public interest test under section 2(2)(b) of the Act. This favours disclosure unless, ‘*in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information*’.

Public interest arguments in favour of disclosing the requested information

34. The public authority stated that it believed accountability to be of relevance. It said that it was important that a force can demonstrate that it is prepared for a CBRN attack and that it is properly and appropriately equipped, an argument also presented by the complainant.
35. It also felt that there were occasions when it was appropriate to disclose information that would have an effect on public safety and that, in this case, disclosing the number of suits which were potentially available could reassure the public.
36. The Commissioner accepts that these are both valid arguments to support disclosure and that the information could further public debate in an area where only limited information is currently available.

⁷This level has since changed to ‘substantial’ <http://www.homeoffice.gov.uk/counter-terrorism/current-threat-level/>

Public interest arguments in favour of maintaining the exemption

37. The public authority argued that disclosure could compromise its law enforcement role. It believed that the effectiveness of current and future strategies to combat terrorism may be compromised.
38. It further argued that there were occasions when it was not appropriate to disclose information that could have an effect on public safety. It stated that it may add to the risk of those living, working or moving through areas where numbers of suits were low as they could be seen by the terrorist as safer areas to operate in.
39. The public authority has further argued to the Commissioner that the complainant has already requested the information from two different police forces and it expressed its concerns that these requests, if married with future similar requests, could give a “national picture”. It believed that this in turn would pose a significant threat to national security as terrorists would be able to pinpoint areas of weakness. It also stated that, once a precedent for disclosure was set, it would be difficult to deny future requests. However, the Commissioner does not consider that these arguments carry much weight as such requests have not been made. Were they indeed made in the future then such an argument may carry more weight if relied on at that time. He would also stress that cases are dealt with on a case-by-case basis and what may appear to be a previous precedent cannot be automatically relied on as circumstances constantly change.

Balance of the public interest arguments

40. The Commissioner accepts that there are strong arguments both for and against disclosure in this particular case. He understands that the public would want to be reassured that the public authority concerned is in a good position to counter any terrorist attack and that it is adequately resourced to do so. It could also be argued that, were the number of suits held by the public authority of such a low number that this could cause concern, then it would also serve the public interest to disclose this information as it would draw attention to this issue and enable a debate as to whether officers should be better equipped in the future.
41. It should also be noted that further public interest arguments were provided to the Commissioner only and that the public authority did not wish these to be imparted to the complainant. These arguments are identified in a confidential annex to this Notice and have not been given to the complainant.
42. The complainant has argued that:

“Common sense suggests that any decision on where to launch a terrorist attack would be based on the location of suitable targets for attack. Even if a terrorist decided to take into account the number of suits held by the force in planning an attack, a wide range of other factors determines the tactical response that Thames Valley Police would make in the event of a terrorist attack. I am aware that police and security forces would pool

resources in order to respond to a significant terrorist attack, and thus knowledge of the number of suits held by just one player would be of little practical value in enabling a terrorist to plan an attack.”

43. Whilst the Commissioner accepts that a terrorist obviously requires a ‘target’ he notes that there is no way of being certain what this target might be. Whilst the complainant has advised the Commissioner that:

“residents of the Thames Valley Police and Hampshire Constabulary areas are subject to ongoing risks from a radioactive release from major nuclear licensed sites at the Atomic Weapons Establishments at Aldermaston and Burghfield, and other nuclear licensed sites in the region”,

the Commissioner is not convinced that these would necessarily be the only targets that a terrorist might consider. In its argument provided in paragraph 30 above, the public authority has said that the terrorist threat ‘includes the possibility of an attack using chemical, biological, radiological or nuclear (CBRN) materials or devices’. Therefore, although the complainant may be correct in assuming that nuclear establishments may be a possible target, the Commissioner notes that in fact there is a wide range of potential targets.

44. The Commissioner is therefore persuaded by the public authority’s argument that disclosure of the information could assist terrorists, thereby putting the general public residing within the area of the public authority at possible risk from attack were any vulnerability apparent. These concerns are further backed up by the following arguments.
45. The Commissioner notes that further information about the total numbers of trained and equipped officers was also already in the public domain at the time of the request - and has continued to be put in the public domain since the request. (This is evidenced by the quotes that the Commissioner has included in paragraphs 19 to 23 of this notice). However, a more detailed breakdown of the total figures is not publicly available and the deployment of CBRN-trained and equipped officers down to force level is therefore not known.
46. It is the Commissioner’s view that, if figures at force level were made available in this case, this would assist in drawing a more detailed picture of the likely CBRN capacity of other forces nationally. This is further compounded by the fact that the same request has been made, at the same time, of a separate police force.
47. He also finds it a compelling argument that knowing a police force’s capacity to deal with such incidents would be likely to identify its vulnerabilities. Conversely, it could also reveal that this public authority’s resources were disproportionately high which could in turn be used to identify that other forces may be more vulnerable. These vulnerabilities could be estimated if individual force levels were provided within the national figure.
48. The Commissioner has also taken into account the ‘confidential’ arguments which were provided to him by the public authority.

49. Although the Commissioner does recognise that there are strong public interest factors to favour release of the information he believes that they are outweighed by the factors for maintaining the exemption in this case.

The Decision

50. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps required

51. The Commissioner requires no steps to be taken.

Other matters

Internal review

52. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern.
53. The complainant remarked that he was unhappy with the standard of the internal review that the public authority undertook.
54. Paragraph 39 of the section 45 Code of Practice encourages authorities to *'provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.'*
55. The outcome of the review in this case, as communicated to the complainant, was very limited and did not demonstrate that a full reconsideration of the factors had taken place. The Commissioner therefore advises that the public authority ensures that future internal reviews are carried out in accordance with the guidelines in the section 45 Code of Practice and communicated in full.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

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.

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 19th day of November 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

**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.”

National Security

Section 24(1) provides that:

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