

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2012

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested a copy of the 'Use of Force' training manual along with related information concerning where the techniques were permitted to be used and by whom. The Information Commissioner considers that the related information is detailed within the manual.
2. The Information Commissioner's decision is that the Ministry of Justice (MOJ) has withheld some of the requested information incorrectly.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information, as described in annex A and identified in the confidential annex B at the end of this notice, to the complainant. As confidential annex B identifies disputed information this is to be disclosed to the MOJ only.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the high court (or the Court of Session in Scotland) pursuant to section 54 of the Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 27 October 2010, the complainant wrote to the MOJ and requested information in the following terms:

- "1. I would like to request a copy of the Control and Restraint training manual.*
- 2. I would also like to know which sections of the detention estate the techniques listed in the manual are permitted to be used in, and*
- 3. By whom."*
6. The MOJ responded on 23 November 2010. It provided a redacted copy of the 'Use of Force Training Manual, July 2006' and stated that the remainder of the information was withheld under section 31(1)(f) (the maintenance of security and good order in prisons), section 38(1)(a) (endangering the physical or mental health of an individual) and section 38(1)(b) (endangering the safety of an individual).
7. Following an internal review the MOJ wrote to the complainant on 26 January 2011. The internal review upheld its original decision to withhold part of the information.

Scope of the case

8. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He did not accept that part of the requested information should be withheld under the exemptions cited.
9. The Information Commissioner understands that both the exemptions cited cover all the withheld information. He has investigated whether the withheld information engages the exemptions cited and, if so, whether the public interest favours the maintenance of the exemptions or the disclosure of the information.
10. The Information Commissioner considers that this case is sufficiently similar in nature to that of a previous case requesting information from the Youth Justice Board (YJB) for England and Wales (ICO reference FS50173181) about a Physical Control in Care training manual that it can be investigated along similar lines.
11. During the Information Commissioner's investigation the MOJ released a further version of the Use of Force training manual with significantly more information unredacted. This latest version can be viewed at: -

<http://www.justice.gov.uk/downloads/global/foi-requests/moj-disclosure-log/november/use-of-force-training-manual.pdf>

These further disclosures have, therefore, not been considered within this notice.

Reasons for decision

Section 31

12. Section 31(1) of FOIA states 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-...

(f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained..."

13. This provision provides that information is exempt if its disclosure *would, or would be likely to, prejudice* the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained. This exemption is qualified by the public interest, meaning that the information should be disclosed if the public interest does not favour maintenance of the exemption despite the prejudice that this would, or would be likely to, cause.

Prejudice to the maintenance of security and good order?

14. The MOJ has specified that its stance is that prejudice *would be likely to* result through disclosure, rather than that it *would* result. The test that the Information Commissioner applies where a public authority has stated that prejudice would be likely to result is that the risk of prejudice must be real and significant, and certainly more than hypothetical or remote.

15. The complainant has argued that the exemption is not engaged on the basis that similar information to that requested in this case was disclosed following the Information Commissioner's decision in case FS50173181 and that this disclosure has not caused prejudice to the security and good order in prisons.

16. The basis for the stance of the MOJ is that prisoners who may be subject to the techniques for physical restraint detailed within the manual could learn the details of these techniques. This could, in turn, enable these prisoners to counteract these techniques. If it were not possible to effectively restrain disruptive prisoners through the use of these techniques, this would be likely to prejudice security and good order.

17. The argument of the MOJ is supported by the content of the manual, which includes great detail about the physical restraint techniques and how to become competent in performing these. The MOJ has also informed the Information Commissioner that there have been several instances where prisoners exposed to the control and restraint

techniques have been able to memorise and counteract these methods and that therefore having the requested information available in the public domain would further increase the opportunity to do this. Whilst unable to give an expert opinion on the possibility of being capable of counteracting these techniques as a result of familiarity with the manual, the Information Commissioner having carefully considered the remaining withheld information accepts that there is a causal link between the disclosure of some of the requested information and the prejudice argued and given the level of detail within the manual, the possibility is sufficient to meet the prejudice test. However, in relation to the information described in annex A and identified in the confidential annex B and for the reasons specified in that annex, the Information Commissioner does not accept that the test has been met.

18. As to the likelihood of this possibility actually occurring the MOJ stated in its response to the Information Commissioner that physical restraint was used on 19,000 occasions in prison establishments between 1 April 2010 and 31 March 2011. This suggests that physical restraint is used regularly. This also suggests that any prejudice likely to result through the inability to use physical restraint effectively would occur relatively frequently.
19. The conclusion of the Information Commissioner is that the likelihood of prejudice to the maintenance of security and good order in prisons resulting from disclosure of the withheld information, other than that described in annex A and identified in the confidential annex B, would be real and significant. The exemption provided by section 31(1)(f) is, therefore, engaged. He is not aware that previous disclosures have, to date, dramatically increased the prejudice to security and good order in prisons. However, the Information Commissioner notes that the disclosure in the YJB case related to young people in Secure Training Centres and is reluctant to disengage the exemption due to the nature of the information requested and the fact that he has been informed prisoners have more recently demonstrated being able to learn techniques by experience alone. The conclusion that the exemption is engaged in relation to some of the information is based on the level of detail included within the content of the information withheld and on the statistic suggesting that physical restraint is used relatively frequently.

The public interest

20. Having concluded that the exemption is engaged in relation to some of the withheld information, it is necessary for the Information Commissioner to go on to consider whether the public interest in the maintenance of this exemption outweighs the public interest in disclosure. When considering where the balance of the public interest lies, the Information Commissioner will take into account the conclusion that prejudice would be likely to occur to the matters specified in section

31(1)(f) and the public interest inherent in the exemption; this being the public interest in the maintenance of security and good order in prisons.

Arguments in favour of maintaining the exemption

21. The MOJ argued that releasing the information into the public domain would allow prisoners access to more detailed information about the current control and restraint techniques used by prison staff. The prisoners could use this information to develop measures to counteract those methods and reduce their effectiveness. The MOJ stated that this would pose a significant threat to regaining and maintaining control and order in prisons.
22. The MOJ continued arguing that it has a duty of care to prison staff and prisoners and to release the withheld information would put this at risk. It asserted that the public expect security and good order to be maintained effectively in prisons and this could not be done if the 'Use of Force' manual was freely available in the public domain.
23. The MOJ maintained that the threat of a loss of order in prisons due to the disclosure of the information was increased due to the frequency with which control and restraint methods had to be used within prison establishments and the fact that some of these methods had been overcome due to prisoners already copying techniques learned from experience.

Arguments in favour of disclosure

24. Both the complainant and the Information Commissioner have acknowledged there are similarities between this case and the previous YJB case. The arguments in favour of disclosure involved in that case are similar to those in this case.
25. Disclosure of the requested information and, therefore, the manual in full would improve transparency in relation to the public's knowledge of good order and security in prisons. Both the MOJ and the complainant noted the importance of the public's confidence in the operation of the prison service and the restraint techniques used within it. The public expect that control and restraint methods used in prisons both work – in that they assist with the maintenance of security and good order – and are safe, in that they treat prisoners humanely and comply with formal standards and procedures.
26. The complainant highlighted that the issue of control in prisons and in particular the 'Use of Force' manual was a frequently debated topic by the press, public and MPs. Disclosure of the requested information would significantly contribute to this debate. The Information Commissioner acknowledges that there is some level of public debate on this issue but

not to the degree that was associated with the use of distraction techniques on young people highlighted in the YJB case.

27. With regard to the previous arguments put forward by the MOJ that the frequency with which the control and restraint methods are used increases the need for the information to be withheld, the Information Commissioner considers that this can also in fact add weight to the public interest in disclosure. If these methods are widely used in the prison estate then it increases the importance of transparency and public debate.
28. The Information Commissioner ordered the disclosure of the information in the related YJB case, the 'Physical Control in Care' (PCC) manual, and this is now in the public domain. The Information Commissioner notes the complainant's arguments that the information in the public domain has not led to a breakdown of security and good order in the prison service and has been provided with no evidence that this is not the case, and he also agrees that disclosure has enabled more informed debate.

Balance of the public interest

29. The Information Commissioner notes that there is a distinction between the use of distraction techniques on young people in Secure Training Centres and restraint techniques used by prison officers in prisons. He concludes that the public interest in maintaining the exemption outweighs the public interest in disclosure. Whilst the Information Commissioner acknowledges the public interest in full disclosure of information about the use of control and restraint techniques in prisons in order to inform debate about concerns around this issue he considers, in the particular circumstances of this case, the public interest in the maintenance of security and good order in prisons significantly outweighed this.

Section 38

30. Section 38(1) of the FOIA states that:

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

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual."

31. As with the previous exemption, this provision provides that information is exempt if its disclosure *would, or would be likely to*, endanger the physical or mental health of any individual (38(1)(a)) and / or the safety (38(1)(b)) of any individual. This exemption is qualified by the public interest, meaning that the information should be disclosed if the public

interest favours this despite the endangerment that this would, or would be likely to, cause.

Endangerment to health and / or safety?

32. The MOJ specified that it believes that endangerment would be likely to result. The test to be applied here is the same as that outlined above in paragraph 14; that is, that the likelihood of endangerment must be real and significant and certainly more than hypothetical or remote.
33. The MOJ identified two parties in relation to whom it believes the endangerment would be likely to occur. First, the public in general. The MOJ believes that disclosure would be likely to lead to individuals outside prisons attempting the techniques outlined in the manual. The public authority further believes that attempting these techniques without appropriate training would be likely to endanger the physical health and safety of those individuals.
34. Secondly, the MOJ argued that endangerment would be likely to result to prison staff and prisoners. As argued in connection with section 31(1)(f), the MOJ believes that disclosure of the contents of the manual would be likely to enable prisoners to counteract the techniques and thus it may not be possible for a violent, disruptive prisoner to be effectively restrained. The MOJ further argued that this lack of effective restraint of a violent prisoner would be likely to endanger the physical health and safety of both prison staff and prisoners, including both the prisoner who cannot be restrained and other prisoners. The MOJ also argued that an uncontrolled violent situation would be likely to endanger the mental health of those present.
35. The Information Commissioner accepts the argument of the MOJ in relation to the likely endangerment of the physical health and safety of prison staff and prisoners as a result of disclosure of the withheld information, excluding the information described in annex A and identified in confidential annex B. Similarly to the conclusion reached in connection with section 31(1)(f), the Information Commissioner accepts the possibility that, given the level of detail within the manual, learning how to counteract the techniques detailed within is a possible outcome of disclosure, and that the evidence of the frequency with which physical restraint techniques are utilised means that the likelihood of this outcome is real and significant. The exemption provided by section 38(1)(a) and (b) is, therefore, engaged in relation to the withheld information excluding that described in annex A and identified in confidential annex B.
36. However, the Information Commissioner does not accept the arguments provided by the MOJ in relation to the mental health of those within prisons or in relation to the physical health and safety of the general

public aside from individuals within prisons. On the basis of the arguments provided by the MOJ the Information Commissioner does not consider that the likelihood of endangerment occurring in either of these ways is real and significant. Had these arguments alone been advanced, the conclusion of the Information Commissioner would have been that this exemption is not engaged.

The public interest

37. When considering the public interest in connection with this exemption, the public interest inherent in the exemption is an important factor. There is a clear public interest in avoiding endangerment to health and safety.

Arguments in favour of maintaining the exemption

38. In this case the Information Commissioner has accepted as a likely consequence of disclosure, of some of the information, endangerment to the health and safety of prison staff and prisoners. There is a public interest in avoiding this endangerment and this is a valid factor in favour of maintenance of the exemption.
39. The frequency of the likely endangerment is relevant when considering what weight this factor carries in favour of maintenance of the exemption. On this point the Information Commissioner refers to the evidence of the frequency with which physical restraint methods are used. As noted above at paragraph 18, the MOJ states that in the period between 1 April 2010 and 31 March 2011, physical restraint was used on 19,000 occasions. Given this evidence that physical restraint is used relatively regularly, the frequency of the likely endangerment would be relatively high. The weight of the public interest in favour of maintenance of the exemption in order to avoid frequent endangerment to health and safety is significant.

Arguments in favour of disclosure

40. The fact that disclosure may actually also serve to protect the health and safety of prisoners runs directly counter to the argument above. The Information Commissioner appreciates that unacceptable or unchecked physical restraint methods used in prisons could lead to significant physical harm to prisoners. The likelihood of this harm occurring is increased due to the relative frequency that control and restraint methods are used. The Information Commissioner notes from the Independent Advisory Committee on Deaths in Custody report, on a cross-sector workshop held in May 2010, that between 1 January 1999 and 31 December 2009, that there was one restraint related death in the prison sector. This restraint related death occurred in 2005, and although this was prior to the publication of the Use of Force Manual being considered here this fact is in contrast to the argued

endangerment to prisoner officers that would be likely to result through disclosure.

41. Without repeating the wording of the section 31(1)(f) public interest consideration, the Information Commissioner considers the evidence of the relative frequency with which physical restraint is used and the possibility of physical harm to prisoners caused by ineffective or excessive restraint methods, to also be relevant when considering the balance of the public interest in connection with section 38(1)(a) and (b). That disclosure would reveal the detail of physical restraint techniques that could lead to endangerment to health and safety, with the result that these techniques would be subject to public scrutiny that may result in changes to these techniques with the aim of protecting health and safety, is a valid public interest factor in favour of disclosure that carries some weight.
42. That disclosure in this case would increase the transparency and accountability of the MOJ in an area of some debate is a valid factor in favour of disclosure. The comments made in the section 31(1)(f) public interest consideration about the nature of the debate about the issues regarding 'Use of Force' manual within prisons are also relevant here.
43. The conclusion of the Information Commissioner, in the particular circumstances of this case, is that the public interest in maintenance of the exemption outweighs the public interest in disclosure. This conclusion is based on the benefit to the health and safety of both prison officers and prisoners that may result through withholding the information from the public domain and conversely, the harm that may result to both through disclosure of the information. Whilst the Information Commissioner recognises the public interest in overall transparency and the value to public debate the information if disclosed would add, he does not consider this factor to carry sufficient weight to tip the balance of the public interest in favour of disclosure.

Right of appeal

44. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

45. 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.
46. 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

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