

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 September 2012

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

#### Decision (including any steps)

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1. The complainant requested copies of written submissions considered as part of a review. The public authority refused to disclose the information stating that it was intended for future publication and was therefore exempt under section 22 of the FOIA. The Information Commissioner's decision is that the public authority was entitled to withhold the information within the scope of the request on the basis of section 22(1) FOIA (information intended for future publication). He does not require the public authority to take any steps.

#### Background

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2. The request is connected to a review entitled: *"A Review of the United Kingdom's Extradition Arrangements"*<sup>1</sup>, as presented to the Home Secretary on 30 September 2011.
3. In his complaint, the complainant drew the Information Commissioner's attention to the following statement which appeared in a report compiled by the Home Affairs Committee subsequent to the publication of the review mentioned above<sup>2</sup>:

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<sup>1</sup> <http://www.parliament.uk/deposits/depositedpapers/2011/DEP2011-1628.pdf>

<sup>2</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/644/64402.htm#evidence>

*"5. The Review Panel received 209 written submissions, and held oral evidence sessions in London, Edinburgh, Brussels, the Hague and Washington DC over a total of 12 days. The evidence the Panel gathered remains with the Home Secretary, who has so far refused to publish it, despite our requests for her to do so. **The Committee can see no legitimate reason for the Home Secretary's refusal to publish the evidence to the Baker Review. The secrecy surrounding the evidence is as frustrating as it is inexplicable and it is not helping to improve low public confidence in this matter. The Committee recommends that the Home Secretary publish it immediately** [emphasis in the original]."*

4. The Information Commissioner has been considering a different complaint alongside this case. Although worded differently it covers the same information. His decision on that case has now been issued and can be found on his website<sup>3</sup>. The reasoning on that case also provides the basis for this decision.

## Request and response

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5. On 5 November 2011, the complainant wrote to the public authority and requested information in the following terms:

*"Is it possible to obtain copies of the written submissions considered by Sir Scott Baker's panel in the course of the extradition review (as listed on p.p. 339-341 of its final report)? I would be particularly interested in seeing the submissions from:*

- *the designated extradition judges in Westminster Magistrates Court; and*
- *Administrative Court judges.*

*Thank you in advance".*

6. The public authority responded on 5 December 2011. It advised that the information was exempt from disclosure by virtue of section 22(1) as it was intended for future publication.
7. Following an internal review the public authority wrote to the complainant on 8 February 2012 maintaining its previous position. It stated that it intended to publish the information by April 2012.

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<sup>3</sup>[http://www.ico.gov.uk/~media/documents/decisionnotices/2012/fs\\_50445847.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2012/fs_50445847.ashx)

## Scope of the case

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8. On 21 May 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled.

9. In his grounds for complaint the complainant cited:

*"1. The "assurances" that the information would be published by April 2012 have been false. The information is, at best, intended for publication at an unspecified future date, possibly in the distant future. S. 22(1) FOIA cannot apply in such circumstances; otherwise, it would defeat the entire purpose of the FOIA, since practically any information held by public authorities may be said to be intended for publication by historians in some distant future. Purposeful interpretation of the Act requires a genuine and firm intention to publish, not false assurances and not merely a declaration to the effect that the information should eventually become available to the public.*

*2. Further and in any event, there is simply no public interest in withholding the information. The view expressed by the Select Committee adds weight to this proposition. It is quite common, and indeed appropriate, for the evidence to be published at the same time as the report based on it. Confidentiality and the protection of personal data of those who made submissions is not a valid consideration, as all submissions were made in full knowledge that they would be used in a publicly available report and that it is common for evidence to be published alongside a report. In any event, it is over half a year since the report was published, and any personal data could have been easily redacted in that period.*

*3. Further and in any event, linking the time of the publication with the time of Home Secretary's response to the Baker report is contrary to the public interest. As explained in our submissions to the Home Office and acknowledged in their internal review decision, the public interest in disclosure consists primarily in the need for the public and parliamentarians to have a thorough debate of Sir Scott Baker's review. As a matter of logic, this debate should take place before, not after, the government has made its decision and announced its plans for an extradition reform (or the lack of it, as the case may be). Any debate after the Home Secretary's announcement would be largely futile.*

*4. On fundamental principles of democracy and transparency, the Home Secretary's decision, when it is made, will need to be subjected to public scrutiny, so the public should know the relevant information which formed the basis of that decision by that time. The information is large in volume, and publication of it at the same time as the Home Secretary's response would fail to properly inform the public debate".*

10. The Information Commissioner will consider the application of section 22(1).
11. During the course of his investigation, the Information Commissioner asked the public authority to confirm whether it was considering full disclosure of all information held. It then became apparent that a small amount of information was not intended for publication by virtue of section 40(2) (personal data). The Information Commissioner asked it to advise the complainant accordingly, which it did, and he then asked the complainant whether or not he accepted this position. The complainant responded saying that provided the redactions were only of this nature then he would accept this position; the Information Commissioner is satisfied that this is the case.

## **Reasons for decision**

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### **Section 22 of the Act – Information intended for future publication**

12. Section 22 of the Act provides that information is exempt if, at the time the public authority receives the request for it:
  - the public authority holds it with a view to its publication;
  - the public authority or another person intends to publish the information at some future date, whether determined or not; and
  - in all the circumstances it is reasonable to withhold the information prior to publication.
13. The Information Commissioner has already considered the application of this exemption in his decision notice FS50445847. The other request was made at a later date than this one; therefore, in the Information Commissioner's view, the sensitivities of disclosure at the time that this request was made were greater.
14. For the same reasons as identified in the other notice, which were given by the public authority on the understanding that they also applied to this request, the Information Commissioner finds that the exemption is engaged. Furthermore, he also concludes that the public

interest in maintaining the exemption outweighed the public interest in disclosing the disputed information.

## Other matters

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15. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.

16. When requesting an internal review the complainant stated:

*"The request made it clear that it was made on behalf of an MEP. As part of the executive branch, Home Office has a constitutional obligation to cooperate with the legislature, including individual MPs and MEPs. Sir Scott Baker's report has, quite naturally, generated a great deal of public and parliamentary debate. As naturally, it is now under intense scrutiny, and it is expected that legislative proposals will follow. Parliamentarians, both national and European, obviously have a vital role to play in that process. It is very reasonable for the evidence reviewed to be made available to them as well as the final report, and necessary to enable an effective performance of their parliamentary duties. A public interest in disclosure of that evidence to an MEP who requests it is overwhelming".*

17. In its internal review the public authority commented:

*"[The complainant] asserts that, as the request was submitted on behalf of an MEP, the Home Office should release the information as it is in the public interest to facilitate the applicant's role as a parliamentarian. The request was handled under the Freedom of Information Act, which is applicant blind, which means we do not consider the motives or status of applicants when processing a request for information".*

18. The Information Commissioner concurs with the view of the public authority. The FOIA is 'applicant blind' and the status of the requester has no bearing on its duty to deal with information requests.

19. Additionally, the Commissioner notes that the public authority is not obliged to provide a definite publication date and that it has not committed itself to one. Nevertheless, the Commissioner does not expect that the disputed information will be withheld for longer than is necessary. The effect of section 22(1) is not to grant a public authority the right to withhold information indefinitely.

20. In this case, the Commissioner could only consider the application of section 22 to withhold the information in the circumstances as they existed at the time of the request. However, he wishes to make clear that any future request for the same information will have to be considered on its merits taking into account the public interest factors relevant at the time of the future request.

## Right of appeal

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21. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

22. 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.
23. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**