

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** **5 May 2015**

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

#### **Decision (including any steps ordered)**

---

1. The complainant requested a file listed at the National Archives, but retained by the Home Office, that relates to the 1969 investiture of the Prince of Wales. Much of the content of the file was disclosed to the complainant, with the remainder withheld under the exemptions provided by the following sections of the FOIA:
  - 23(1) (information relating to, or supplied by, security bodies)
  - 31(1)(a) and (b) (prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders)
  - 40(2) (personal information)
2. The Commissioner's decision is that sections 23(1) and 40(2) were cited correctly. For the one document withheld under sections 31(1)(a) and (b), the Commissioner finds that those exemptions were not engaged. The Home Office is now required to disclose this information.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Disclose document number 60.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## **Request and response**

---

5. On 27 May 2014, the complainant wrote to the Home Office and requested information in the following terms:

*"I would like to request a file which is listed on the National Archives catalogue as HO 315/1223.*

*The file relates to the investiture of the Prince of Wales at Caernarvon and covers the period 1968 – 1969."*

6. After sending an earlier holding response, the Home Office responded substantively on 24 July 2014. Some information was disclosed, but the remainder was withheld under the exemptions provided by the following sections of the FOIA:

23(1) (information relating to, or supplied by, security bodies)

24(1) (national security)

31(1)(a) and (b) (prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders)

40(2) (personal information)

7. The complainant responded on 5 August 2014 and requested an internal review. The Home Office responded with the outcome of the internal review on 1 September 2014. The conclusion of this was that the part refusal of the request under the exemptions cited previously was upheld.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 10 September 2014 to complain about the part-refusal of his request. The complainant argued that the age of the information and the fact that it related to a one-off event meant that no harm would result through its disclosure, and that the file should have been disclosed in its entirety.
9. During the investigation of this case, the Home Office disclosed much of the information that it had previously withheld from the complainant. The following analysis concerns the information that continued to be withheld, in relation to which it has been necessary for the Commissioner to consider the exemptions provided by sections 23(1), 31(1)(a) and (b) and 40(2).

## Reasons for decision

---

### Section 23(1)

10. Section 23(1) of the FOIA provides an exemption for information that relates to, or was supplied by, any of a list of security bodies specified in section 23(3). This is a class based exemption, meaning that if information is within the class described in the exemption, it is exempt; there is no requirement to consider the consequences of disclosure.
11. This exemption is also absolute, meaning that it is not subject to the public interest test. In his correspondence with the Home Office, the complainant alluded to section 64(2), which provides that section 23 is qualified by the public interest where the information in relation to which it was cited is a historical record, the threshold for which is currently being reduced from 30 years to 20, *and* it has been passed by the originating body to the National Archives.
12. Whilst the information here is a historical record due to its age, it has been retained by the Home Office and not been passed to the National Archives. This means that section 64(2) does not have effect, so section 23(1) remains an absolute exemption in relation to the information in question.
13. Turning to whether this exemption is engaged, the question here is whether the information in question relates to or was supplied by any of the bodies listed in section 23(3). In order to make a decision on this point, representatives of the Commissioner visited the Home Office and viewed the information in relation to which section 23(1) was cited.
14. During this exercise it was identified that some of the information was either directly supplied by, or directly related to, a body listed in section 23(3). For that information, the exemption provided by section 23(1) is clearly engaged.
15. In relation to other information, the link to a section 23(3) body was indirect in that it was via police Special Branch; some of the information in relation to which section 23(1) was cited had either been supplied by, or related to, Special Branch. Whilst Special Branch is not itself a section 23(3) body, the argument of the Home Office was that the working relationship between Special Branch and section 23(3) bodies was of such closeness that this information will relate to one or more of those bodies.
16. The Commissioner has accepted this argument in a number of previous cases on the basis that he recognises that the working relationship between Special Branch and section 23(3) bodies is indeed very close

and so situations where its work has not involved section 23(3) bodies will be rare. In this case, the argument was specifically evidenced in the information inspected and the Commissioner accepts that section 23(1) is engaged in this case in relation to the information that relates to the work of police Special Branch.

17. In relation to the information that directly relates to, or was supplied by, a section 23(3) body, and the information where the connection to a section 23(3) body is via Special Branch, the conclusion of the Commissioner is that the exemption provided by section 23(1) of the FOIA is engaged.

### **Sections 31(1)(a) and (b)**

18. In relation to one document, the Home Office relies only on sections 31(1)(a) and (b). Section 31(1)(a) provides an exemption where disclosure of the information would, or would be likely to, prejudice the prevention or detection of crime. Section 31(1)(b) provides the same in relation to the apprehension or prosecution of offenders. Consideration of these exemptions involves two stages. First, the exemptions must be engaged by virtue of a likelihood of relevant prejudice resulting from disclosure. Secondly, the public interest test must be applied.
19. As to whether these exemptions are engaged, the Home Office has advanced the same arguments for both sections 31(1)(a) and (b), so these exemptions are considered jointly here. The test that the Commissioner applies when considering whether prejudice would be likely to result is that there must be a real and significant likelihood of this, rather than it being a remote possibility. The question here is, therefore, whether disclosure of the information in question would result in a real and significant likelihood of prejudice to the prevention or detection of crime or to the apprehension or prosecution of offenders.
20. The argument of the Home Office was that disclosure of this information would reveal "*operational tactics, techniques and processes employed by the law enforcement agencies at the time*". It believed that disclosure of this information would be likely to result in prejudice as disclosure of those tactics, techniques and processes could undermine them.
21. The Commissioner accepts that this argument is relevant to the matters mentioned in sections 31(1)(a) and (b). He does not, however, believe that this argument is made out through the content of the information, which consists of a written note. Having reviewed that content, the Commissioner notes that this is concerned with the administration of policing Welsh nationalist activism in the period leading up to the 1969 investiture of the Prince of Wales. It contains nothing that reveals the detail of that policing work itself.

22. In its argument the Home Office stated that the police's "*investigative techniques and methodologies change little over time*". Notwithstanding that point, the Commissioner's view is that there is simply nothing within the content of the information that reveals the investigative techniques and methodologies that were employed at that time. Given this, the Commissioner does not accept that there is anything within the content of this information that would be likely to result in the undermining of police investigations.
23. The complainant argued that the passage of time since the recording of this information and the unique (at least within the space of several decades) nature of the event that it concerns meant that no harm would be likely to result through disclosure. The Commissioner agrees that these are valid factors. In view of the passage of time in particular it was necessary for the Home Office to advance a convincing argument as to how disclosure of this information would be likely to result in prejudice despite its age. No such convincing argument has been made, however.
24. For these reasons the conclusion of the Commissioner is that disclosure of the information in question would not result in a real and significant likelihood of prejudice and so the exemptions provided by sections 31(1)(a) and (b) are not engaged. Given this conclusion it has not been necessary to go on to consider the balance of the public interests and at paragraph 3 above the Home Office is now required to disclose the single document in relation to which sections 31(1)(a) and (b) alone were cited.

## **Section 40(2)**

25. This section provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. The Home Office has cited this exemption in relation to two documents that record details of crimes of which named individuals are accused.
26. Covering first whether this information constitutes personal data, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

*"personal data' means data which relate to a living individual who can be identified-*

*(a) from those data, or*

- (b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.*
27. The information in question identifies individuals by name and records details of crimes they are accused of committing. Clearly that content both identifies and relates to those individuals and so is their personal data according to the definition given in section 1(1) of the DPA. The Commissioner trusts that the Home Office has applied section 40(2) only in relation to names of *living* individuals, but to be clear would stress that the DPA does not apply, and hence neither can section 40(2), in relation to information about deceased individuals.
  28. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which states that personal data should be processed fairly and lawfully, and in particular on whether disclosure would be, in general, fair to the named individuals. In forming a conclusion on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectation of the data subjects, the potential consequences of disclosure upon them and whether there is any legitimate public interest in the disclosure of this personal data.
  29. Section 2 of the DPA sets out what is considered *sensitive* personal data for the purposes of that Act. Included within this list is information about the commission or alleged commission of a crime. The personal data in question here is, therefore, sensitive according to that definition.
  30. In this case, the information relates to crimes that the named individuals were suspected of committing several decades ago. The Commissioner considers it clear that those individuals would hold a strong and reasonable expectation that the Home Office would not disclose that information now and that disclosure despite that expectation would be likely to be distressing to those individuals. Furthermore, no Schedule 3 condition for processing sensitive personal data, as required by the first data protection principle, applies in the circumstances of this case.
  31. As disclosure of this information is likely to have a distressing effect on the data subjects, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose it. The exemption provided by section 40(2) is, therefore, engaged in relation to this information and the Home Office was not obliged to disclose it.

## Right of appeal

---

32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

33. 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.
34. 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 .....**

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