

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the Port Approval for the Port of Immingham.
2. The Commissioner's decision is that the Home Office was entitled to apply section 31(1)(a) and (e) of FOIA to withhold the requested information.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 20 May 2022 the complainant requested information of the following description:
" 1) The current Port Approval for the Port of Immingham, and
2) The Port Approval for the Port of Immingham that was force in 2014"
4. On 3 October 2022 the Home Office conducted an internal review stating that it held the information requested but was withholding it under section 31(1)(a) and (e) of FOIA.

Reasons for decision

5. This reasoning explains why the Commissioner is satisfied with the Home Office's application of section 31(1)(a) and (e) of FOIA.

Section 31 - law enforcement

6. Section 31 of FOIA says that information is exempt from disclosure if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
7. Consideration of section 31(1)(a) and (e) is a two-stage process, even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
8. In its internal review, the Home Office explained that section 31(1)(a) and (e) was applied to prevent disclosure of information which would assist those engaged in criminal activities at the UK's borders. It explained that the information would give criminals the ability to build a picture of the work of Border Force and identify any strengths and weaknesses, compromising the integrity of immigration controls.
9. It also explained that if the information about the Port Approval for the Port of Immingham was to be disclosed, it would disrupt the prevention and detection of crime in the areas of smuggling, assessment of tax and duties and disrupt immigration controls.
10. The Commissioner refers to a previous case which found that sections 31(1)(a) and (e) were engaged in relation to operational information about a ferry port¹. On appeal this decision was upheld by the First-tier Tribunal.
11. The Commissioner's view is that there is a valid argument about how a fuller picture of law enforcement efforts at ports could be built up through disclosures in response to other similar requests, combined with the response to this request. Whilst he does not accept that the test for would prejudice is met, the Commissioner has gone on to consider whether the test for would be likely is met.

¹ [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](https://ico.org.uk)

12. The test that the Commissioner applies when considering whether prejudice would be likely is that there must be a real and significant likelihood of prejudice occurring, but it is not necessary for this outcome to be more probable than not. Applying that test here, the Commissioner accepts that there is a real and significant likelihood of prejudice relevant to section 31(1)(a) and (e) through the information in question being combined with existing information, and information disclosed in response to future similar information requests. The mosaic effect picture that would emerge through a number of disclosures could then be of significant use to those wanting to build a picture of the work of Border Force to identify strengths and exploit weaknesses.
13. The Commissioner therefore accepts that disclosure of the requested information would likely prejudice law enforcement operations and the operation of border controls. The Commissioner is therefore satisfied that the exemptions provided by sections 31(1)(a) and (e) are engaged.

The public interest test

14. Section 31 is a qualified exemption and is subject to the public interest test. The Commissioner must consider whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

15. The Home Office recognised that there is an inherent public interest in the transparency and accountability of public authorities. It also recognised the broad public interest in furthering public understanding of the issues with which public authorities deal. The Home Office explained that there is a clear public interest in the work of government departments being transparent and open to scrutiny to increase diligence.
16. The Home Office also recognised that there is a public interest in ensuring confidence in the United Kingdom's border controls of ports approval information.

Public interest arguments in favour of maintaining the exemption

17. The Home Office explained that it would not be in a position to disclose any information it may hold in relation to sensitive port operation which could compromise ongoing Border Force activities, including the layout details of ports.

18. The Home Office stated that protecting the UK border is, and always has been, of paramount importance to the government. It explained that it has never been government practice, relating to law enforcement to be released and that this includes offering commentary on details regarding ports.

Balance of the public interest

19. The Commissioner agrees that there is an inherent public interest in transparency and accountability of public authorities. He also recognises there is a public interest in ensuring confidence in the United Kingdom's border controls of ports approval information.
20. However, he also recognises the strong public interest in protecting the ability of public authorities to enforce the law and protect borders. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – in this case, it would not be in the public interest to prejudice law enforcement operations and the capability of border controls.
21. In conclusion, the Commissioner recognised that the prejudice to the process inherent in section 31(1)(a) and (e) would need to be outweighed by sufficiently weighty factors in favour of disclosure. In this case the Commissioner does not believe that the public interest in favour of disclosure is sufficiently weighty. His finding is that the public interest in the maintenance of section 31(1)(a) and (e) outweighs the public interest in disclosure and that the Home Office was not obliged to disclose the information requested.

Right of appeal

22. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.

24. 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

**Laura Tomkinson
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SK9 5AF**