

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2023

Public Authority: Serious Fraud Office
Address: 2-4 Cockspur Street
London
SW1Y 5BS

Decision (including any steps ordered)

1. The complainant requested information on the cost of the investigation by the Serious Fraud Office (the 'SFO') into Unaoil. The SFO refused to disclose this information and cited the exemptions provided by the following sections of FOIA:
 - 31(1)(a) (prejudice to the prevention or detection of crime)
 - 31(1)(b) (prejudice to the apprehension or prosecution of offenders) and
 - 31(1)(c) (prejudice to the administration of justice)
2. The Commissioner's decision is that the SFO cited these exemptions correctly and so it was not obliged to disclose this information.
3. No steps are required as a result of this notice.

Background

4. The SFO is a specialist prosecuting authority tackling the top level of serious or complex fraud, bribery and corruption. It is part of the UK criminal justice system covering England, Wales and Northern Ireland.
5. From his own research, the Commissioner understands that in March 2016, the SFO opened a criminal investigation to the activities of Unaoil, its officers, employees and agents, in connection with suspected

offences of bribery, corruption and/or money laundering. Further details of that investigation and the outcomes can be found via the following URL.¹

6. The Commissioner has considered a similar request in a previously issued decision notice in February 2018.² Whilst previous decisions are not legally binding and the Commissioner must consider each case on its individual merits, he has taken it into account when assessing the current case.

Request and response

7. On 29 June 2023, the complainant wrote to the SFO and requested information in the following terms:

“Please provide the following information relating to the costs of the Serious Fraud Office’s Unaoil investigation (meaning the investigation in its broadest sense into Unaoil and associated individuals, whether charged or not charged):

a) The total aggregate cost of the entire investigation;

b) The total aggregate cost broken down by:

i) Year;

ii) Investigation costs, trial costs, and appeal costs;

iii) SFO’s own costs, covering others’ costs, and compensation (or similar payments);...”

8. The SFO responded on 27 July 2023. It refused to provide the requested information citing the following FOIA exemptions:

- Section 31(1)(a) – the prevention or detection of crime,
- Section 31(1)(b) - the apprehension or prosecution of offenders, and
- Section 31(1)(c) - the administration of justice

¹ <https://www.sfo.gov.uk/cases/unaoil/>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258227/fs50694503.pdf>

9. Following an internal review the SFO wrote to the complainant on 15 August 2023 and maintained its position.

Scope of the case

10. The complainant contacted the Commissioner on 15 August 2023 to complain about the way his request for information had been handled. He disputed the SFO's reliance on section 31 and its assessment of the associated public interest test.
11. The Commissioner has considered whether the SFO was entitled to rely on sections 31(1)(a), (b) and (c) of FOIA to withhold the requested information.

Reasons for decision

Section 31 – law enforcement

12. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
13. In this case, the SFO is relying on sections 31(1)(a), (b) and (c) of FOIA in relation to all the withheld information. These subsections state that information is exempt if its disclosure would, or would be likely to, prejudice:
 - (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders; and
 - (c) the administration of justice.
14. In order to engage a prejudice-based exemption such as section 31 there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice-based exemption:
 - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure

of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
15. Consideration of the exemption at section 31 of FOIA is a two-stage process - even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
 16. Rather than differentiate between the subsections of the exemption, the SFO has presented one set of arguments which the Commissioner has considered jointly. The Commissioner acknowledges that the arguments provided relate to the subsections cited.
 17. In its submissions to the Commissioner, the SFO has explained that:

"The SFO considers that disclosure of the requested information in this case would create a precedent for future FOIA 2000 requests and lead to a situation where the SFO would be required to release the costs of all cases. Section 31 is therefore engaged in this response because of the prejudice or likely prejudice caused by the cumulative effect of disclosing information in response to a series of similar requests (the 'precedent effect').

Like all law enforcement agencies, the SFO balances the need for transparency with the need to protect our investigations and prosecutions. In line with this approach, we publish an annual report and share our priorities via our business plan, but do not publish details on our ongoing investigations and lines of inquiry. On costs, we publish our overall budget; we do not publish our individual case costs at any stage from first referral to conviction or even after this point. This would comprise our ability to investigate and prosecute economic crime, which is the core function of the SFO and risks allowing criminals to use information about our work to their advantage...

Releasing the information requested in this FOI request would prejudice: the prevention or detection of crime; the apprehension or prosecution of offenders; and the administration of justice, engaging Section 31(a)(b)(c) of the FOIA. This approach has already been upheld by the ICO in ICO Decision notice FS50694503."

18. The Commissioner is satisfied that the first part of the three-part test set out above is met.

19. The SFO has argued that:

“Releasing the Unaoil case costs would directly reveal how much public funding the SFO has chosen to allocate to this case and our cases, by setting a new precedent for the release of this data.”

20. The SFO also explained that it has an extremely small and specialist caseload and that, in a short time, via multiple FOIA requests, it would be possible for individuals to build up a complete picture of its work and allow them, including defendants in its cases, to make comparisons between its cases based on the level of resources allocated. This, it argued, would directly harm the SFO’s interest and mission and contradict the protections that section 31 is intended to provide.

21. Further, the SFO set out five main reasons for withholding the requested information, all of which it considers engage section 31(1) of FOIA. Specifically, it said:

1. Releasing the information could allow criminals to understand how the SFO is likely to resource different cases and incentivise some types of crime. If it was made publicly available how much the SFO spends on a case (from pre-investigation, to investigation, through to prosecution), individuals (including criminals) could glean an understanding of the types of cases we are likely to take on and the criteria for considering such cases. Over time, releasing this information would enable individuals to build up a picture of past, current and potentially future investigations, incorporating the broader risks of criminal activity in an effort to predict what type of cases are given greater funding. This would therefore drive and inform criminal behaviour enabling criminals to target their efforts ultimately encouraging criminal activity and compromising public safety.
2. The requested information could be used tactically by suspects and defendants to derail SFO trials. Releasing the details of our case costs via cumulative FOI requests, would allow suspects and defendants to use this information to their advantage in their own cases. For example, via legal tactics, such as vexatious disclosure requests to prolong and delay trials until the SFO is placed in a position whereby significant amounts of public money is spent servicing such requests rather than other key elements of the case.
3. Releasing the requested information would provide detail, on how an investigation is progressing and what investigative techniques

are being used, which could be used by suspects to their advantage. We cannot provide details on our investigations and what activities we may be undertaking beyond what is on our website. This protects our work, much of which is covert.

However, were we to release case costs during our investigations, this would create a picture of current activity on the case. A spike in expenditure would indicate a period of intensive activity in an investigation and suspects could seek to undermine those efforts by destroying evidence or evading arrest. This would therefore prejudice the SFO's ability to prosecute economic crime.

4. Releasing the information could create political pressure to set certain funding levels on high profile cases. A case with low funding could be incorrectly identified as low priority for the SFO, which could undermine public confidence in our work on a case. The reality of our casework is that costs change over time around the demands of the case. If there was reputational risk attached to making budgetary changes, this could create public or political pressure to maintain or change the allocation of funding regardless of operational needs and requirements of a case.
 5. Releasing the information could reveal covert cases. SFO cases are often covert at the beginning, this is to i) ensure it can progress without interference from suspects and/or those connected to suspects; ii) ensure evidence is preserved, and iii) avoid causing undue harm to the reputation of individuals who might be considered potential suspects. If repeat requests for investigation costs were submitted and revealed (the SFO takes on a small number of cases), it would be possible for suspects and criminals to work out a change in our caseload, therefore revealing the start or finish of covert cases, and an understanding of where we are allocating resources.
22. Having considered the submission above, the Commissioner accepts that the second part of the three-part test has been met.
 23. The prejudice test is not limited to the harm that could be caused by the requested information on its own. Public authorities can take account of any harm likely to arise if someone pieced together the requested information with other information to form a broader picture.
 24. Complying with one request can make it more difficult to refuse requests for similar information in the future. Public authorities are therefore entitled to consider any harm that could be caused by combining the requested information with the information a public authority could subsequently be required to provide, if the current request was complied with. Such points are clearly relevant to this case, concerning the costs of a particular SFO investigation.

25. The SFO has further argued:

“While the anticipated prejudice is based upon our assessment that a precedent would be set for future requests, the SFO considers, based upon its experience of receiving FOIA requests, that the likelihood of receiving similar requests in relation to other cases is extremely high, if not a certainty. As a result, it is the SFO’s view that releasing this information would prejudice the apprehension or prosecution of offenders, the administration of justice and the prevention or detection of crime.”

26. The Commissioner accepts that similar requests for other SFO investigations costs, if successful, would, over time, likely enable a wider picture to be built. The Commissioner considers that there is a real and significant risk of disclosure causing the envisaged harms. Given that the higher threshold of ‘would’ is dependent on other information being released, and that the SFO has cited “could” in some of its five reasons set out above, the Commissioner considers that the lower threshold of ‘would be likely’ to be met in this case.
27. The Commissioner is mindful that disclosure under FOIA is ‘to the world’, and not just to the complainant himself.
28. The Commissioner therefore considers that all three parts of the prejudice test have been met and that sections 31(1)(a), (b) and (c) of FOIA are engaged.

Public interest test

29. The Commissioner must next consider the associated public interest test; the arguments have again been submitted collectively for all three limbs of section 31(1) cited by the SFO.

Arguments in favour of disclosure

30. The complainant argued that the public interest favours disclosure of the requested information, stating:

“The SFO has not appropriately weighed the public interest. This is not just about "explaining the work of the SFO", it's about scrutinising the SFO's significant failings and potential wastage of public funds.”

31. The SFO acknowledged factors in favour of disclosure, such as understanding the general process the SFO uses to investigate fraud, the resourcing of its work, and how public money is spent.

32. The SFO told the Commissioner:

"We recognise there is interest in our case costs, we are asked for these regularly by the media and defence law firms. However, we meet our transparency obligations via our Annual Report and Accounts where our overall budget is available.³ We also share our annual priorities (and further detail on our cases which we can safely provide without jeopardising investigations and prosecutions) on our website."

Arguments in favour of maintaining the exemption

33. The SFO submitted the following arguments in favour of maintaining the section 31(1) exemption:

"We consider that the stronger public interest lies in maintaining the exemption at section 31(1) of the FOIA. We are satisfied that releasing the information requested would set a precedent for the release of costs on every SFO case through the FOIA. This would allow members of the public (including suspects and/or defendants) to determine which cases the SFO is prioritising, and any areas of focus for the organisation, while also providing details that could indicate changes in our caseload. Criminals could therefore use this to their advantage, hindering the SFO's ability to prosecute economic crime and protect the UK economy."

34. It concluded that the public interest favours withholding the requested information.

Balance of the public interest

35. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight when considering the public interest test.

36. Whilst the complainant argued that there is a public interest in accountability and transparency around expenditure on the Unaoil investigation, and what he describes as the SFO's "significant failings", the Commissioner notes that there is already some official information publicly available regarding the SFO's overall budget and annual priorities.

³ <https://www.sfo.gov.uk/download/annual-report-accounts-2022-23/>

37. The Commissioner has also taken the SFO's following explanation into consideration:

"Like all law enforcement agencies, the SFO balances the need for transparency with the need to protect our investigations and prosecutions. In line with this approach, we publish an annual report and share our priorities via our business plan, but do not publish details on our ongoing investigations and lines of inquiry. On costs, we publish our overall budget; we do not publish our individual case costs at any stage from first referral to conviction or even after this point. This would comprise our ability to investigate and prosecute economic crime, which is the core function of the SFO and risks allowing criminals to use information about our work to their advantage."

38. Whilst the Commissioner accepts that this published information may not evidence whether or not there may have been "significant failings", he considers that these statistics already go some way to satisfying any public interest in disclosure of the type of information requested by the complainant under FOIA, and transparency around overall priorities, budget and some case information. He must also consider the role of the SFO and any potential impact of disclosure on its ability to carry out its functions effectively.
39. Whilst the SFO has confirmed that the Unaoil case is closed, it has explained that this is subject to change (as applies to all its cases). It said:

"Our cases can be reopened when more information comes to light to inform a past investigation, via judicial review, the Criminal Cases Review Commission or for many other reasons. There is no set end point and many of the factors that could lead to the case reopening sit outside of the SFO's control. For example, one SFO case, which closed in 2017, has just reopened as an individual has succeeded in reaching the Court of Appeal via the Criminal Cases Review Commission. Therefore, we consider this request and the implications of release, as set out above, potentially effective across all our cases – be that at investigation, prosecution stage or currently closed."

40. The Commissioner has taken the above into account; he regards the public interest in avoiding prejudice to the Unaoil investigation (and potentially future and/or past investigations) to be a factor of very significant weight in favour of maintenance of the exemptions.
41. In conclusion, the Commissioner has recognised the valid public interest in favour of disclosure of the requested information owing to the significance and profile of the Unaoil investigation. However, he

considers that the public interest in avoiding prejudice to the SFO's investigations is the weightier factor here.

42. The Commissioner considers that on balance, the factors against disclosure have greater weight and the public interest lies in maintaining the exemptions cited in this case.

Right of appeal

43. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

44. 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.
45. 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

Carolyn Howes
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