



Neutral citation number: [2024] UKFTT 1054 (GRC)

Case Reference: EA/2023/0538

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights**

**Heard by Cloud Video Platform  
Heard on: 19 June 2024  
Decision given on: 26 November 2024**

**Before**

**JUDGE STEPHEN ROPER  
MEMBER EMMA YATES  
MEMBER STEPHEN SHAW**

**Between**

**KADHIM SHUBBER**

Appellant

**and**

**(1) THE INFORMATION COMMISSIONER  
(2) THE SERIOUS FRAUD OFFICE**

Respondents

**Representation:**

For the Appellant: Aliya Al-Yassin of Counsel

For the First Respondent: did not appear

For the Second Respondent: Alex Shellum of Counsel

**Decision:** The appeal is Allowed

**Substituted Decision Notice:**

The Tribunal's Decision Notice in case reference EA/2023/0538, set out below, is substituted for the Commissioner's Decision Notice reference IC-251765-V8G2, dated 21 November 2023, with regard to the request for information made to The Serious Fraud Office by Kadhim Shubber dated 29 June 2023.

*Substituted Decision Notice*

1. The Serious Fraud Office shall disclose the information it holds relating to the request for information made to it by Kadhim Shubber dated 29 June 2023.
2. The Serious Fraud Office must disclose such information within 20 working days of

the promulgation of this decision, or (if there is an application to appeal this decision) within 14 working days after being notified of an unsuccessful outcome to such application or any resulting appeal. For these purposes, 'working day' has the meaning given in section 10(6) of the Freedom of Information Act 2000.

3. Failure to comply with this decision may result in the Tribunal making written certification of this fact pursuant to section 61 of the Freedom of Information Act 2000 and may be dealt with as a contempt of court.

## **REASONS**

### **Preliminary matters**

1. In this decision, we use the following terms to denote the meanings shown:

Appellant:	Kadhim Shubber.
Commissioner:	The Information Commissioner (the First Respondent).
Decision Notice:	The Decision Notice of the Commissioner dated 21 November 2023, reference IC-251765-V8G2, relating to the Request.
Duty to Disclose:	The duty of a public authority to communicate requested information which it holds, pursuant to section 1(1)(b) (set out in paragraph 26).
FOIA:	The Freedom of Information Act 2000.
Public Interest Test:	The test, pursuant to section 2(2)(b) (set out in paragraph 29), as to whether, in all the circumstances of the case, the public interest in maintaining the exemption to the Duty to Disclose outweighs the public interest in disclosing the information.
Relevant Sections:	Sections 31(1)(a), 31(1)(b) and 31(1)(c).
Request:	The request for information made to the SFO by the Appellant, dated 29 June 2023, as referred to in paragraph 6.
SFO	The Serious Fraud Office (the Second Respondent).
Withheld Information:	Information falling within the scope of the Request which was withheld by the SFO and which was included within the closed bundle in the appeal.

2. Unless the context otherwise requires (or as otherwise expressly stated), references in this decision:
  - a. to numbered paragraphs are references to paragraphs of this decision so numbered; and
  - b. to any section are references to the applicable section of FOIA.

## Introduction

3. This is an appeal against the Decision Notice, which (in summary) decided that the SFO was entitled to refuse to disclose the Requested Information on the basis that the Relevant Sections were engaged and that the Public Interest Test favoured maintaining the exemption to the Duty to Disclose. The Decision Notice did not require the SFO to take any steps.

## Background to the Appeal

4. The background to the appeal is as follows.
5. It is also appropriate for us to refer briefly to the background to the Unaoil case which was the subject of the Request. The material aspects of the background were not in dispute. The Unaoil case was a criminal investigation by the SFO into Unaoil, a Monaco-based group of companies owned and run by certain individuals, and the investigation focussed on allegations of extensive bribery and corruption in the oil industry. There was controversy regarding the way in which the case was handled by the SFO and although the SFO's investigation led to the conviction of three individuals, those convictions were quashed by the Court of Appeal. Following the Court of Appeal's decision, the Attorney General commissioned Sir David Calbert-Smith to lead an independent review into the SFO's handling of the Unaoil case. Amongst other things, in his report (published in July 2022), he found that the Director of the SFO had made "*a number of mistakes and misjudgments*" and he considered the case to be "*unique*" for its "*significant number of fundamental failures*".

## The Request

6. On 29 June 2023, the Appellant contacted the SFO by email, requesting 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)".*

7. The SFO responded on 27 July 2023 confirming that it held the Requested Information. The SFO withheld the Requested Information on the basis that the exemptions in the Relevant Sections were engaged and that the Public Interest Test favoured maintaining the exemptions.
8. On 15 August 2023, the Appellant complained to the Commissioner, pursuant to section 50, about the SFO's response to the Request. Subsequently, the Commissioner therefore issued the Decision Notice.

## *The Decision Notice*

9. In the Decision Notice, the Commissioner concluded that:
  - a. the Relevant Sections were engaged in respect of the Requested Information - namely:
    - 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); and
  - b. the Public Interest Test favoured maintaining the exemptions.
10. The Commissioner's view, was (in essence) that there was a real and significant risk that disclosure of the Requested Information would prejudice the matters specified in the Relevant Sections. In part, this was because of concerns that:
  - a. complying with one request under FOIA can make it more difficult to refuse requests for similar information in the future; and
  - b. disclosure of information in response to similar requests regarding the SFO's investigation costs would, over time, be likely to enable a wider picture to be built of the inner workings of the SFO's investigations and prosecutions.
11. The Commissioner's view was that the lower threshold of prejudice (namely, "would be likely to", rather than "would" prejudice the matters in the Relevant Sections) was met.
12. The Decision Notice set out the Commissioner's views on arguments relevant to the Public Interest Test, considering factors in favour of disclosure of the Requested Information and factors in favour of maintaining the exemptions in the Relevant Sections. The Commissioner concluded that the balance of interests fell in favour of the maintenance of the exemptions.

## **The appeal**

### *The grounds of appeal*

13. The Appellant's grounds of appeal were based on his arguments that:
  - a. the Commissioner erred in concluding that the exemptions in the Relevant Sections were engaged;
  - b. the Commissioner erred in concluding (in respect of the Public Interest Test) that the public interest favoured maintaining the exemptions.
14. In respect of the first of those grounds, the Appellant argued (in summary) that:
  - a. the Commissioner was wrong to conclude that any prejudice relied on by the SFO was "*real, actual or of substance*" - in particular, because:
    - the Commissioner wrongly overstated the 'precedent effect' of disclosing

the information in this case;

- accordingly, there was no necessary causal relationship between the disclosure of the information requested and the prejudice covered in the Relevant Sections;
  - the Commissioner was wrong simply to accept the SFO's "wholly unsubstantiated" assertion as to the effect of disclosure on informing and influencing the behaviour of criminals, defendants and suspects;
  - the Commissioner was wrong to accept the SFO's argument that the requested information "*would provide detail, on how an investigation is progressing*";
- b. even if the nature of the prejudice was accepted, the Commissioner was wrong to find that the prejudice "would be likely" to occur - this was because the 'precedent-effect' was unduly overstated;
- c. even if the SFO would find it difficult to refuse future requests, it was fanciful to suggest that the prospect of the Requested Information, if disclosed, would influence the top level of serious or complex fraud, bribery and corruption;
- d. the likelihood of the occurrence of the prejudice covered by the Relevant Sections was merely a hypothetical or remote possibility, not a real and significant risk.
15. In respect of the second of those grounds, the Appellant argued (in summary) that:
- a. whilst the Commissioner correctly accepted that publicly available information on the SFO's overall budget and annual priorities did not address the specific public interest in understanding the level of wasted taxpayer money, he failed to give sufficient weight to the specific public interest in disclosure, given the need to promote transparency and accountability in relation to the specific circumstances of the case (including the significant failings of the SFO in the Unaoil case);
  - b. the Commissioner was wrong to accept the SFO's argument, without evidence, that disclosure would prejudice the Unaoil case;
  - c. the Commissioner did not give due weight to the fact that the Unaoil case is closed and gave undue weight to the hypothetical possibility that it could be reopened.

### *The Tribunal's powers and role*

16. The powers of the Tribunal in determining the appeal are set out in section 58. In summary, the Tribunal's remit for the purposes of the appeal is to consider whether the Decision Notice was in accordance with the law. In reaching its decision, the Tribunal may review any findings of fact on which the Decision Notice was based and the Tribunal may come to a different decision regarding those facts.

### *Mode of hearing*

17. The proceedings were held by the cloud video platform. The Tribunal panel and the

parties (except for the Commissioner) joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way. There were no interruptions of note during the hearing.

18. The Appellant did not attend in person and was represented by Aliya Al-Yassin of Counsel. The Commissioner did not appear and was not represented. The SFO was represented by Alex Shellum of Counsel.

### *The evidence and submissions*

19. The Tribunal read and took account of an open bundle of evidence and pleadings, as well as a closed bundle. We also received and took account of written skeleton arguments from the Appellant and the SFO.
20. The open bundle included a witness statement on behalf of the SFO. The witness's statement was given in their capacity as Interim Chief Capability Officer at the SFO. It is not necessary for us to identify this witness personally in this decision - therefore we merely refer to them as "the witness" and we mean no disrespect to them in doing so.
21. The closed bundle contained the Withheld Information, as well as unredacted parts of the witness statement and one of its exhibits which had been redacted in the open bundle.
22. We heard oral submissions from Ms Al-Yassin on behalf of the Appellant and from Mr Shellum on behalf of the SFO. We also heard oral evidence from the witness.
23. All of the contents of the bundles and the skeleton arguments were read and considered, and all of the submissions from the parties were taken into account, even if not directly referred to in this decision.
24. During the hearing, the Tribunal held a closed session where the Withheld Information and other matters relating to the closed material were addressed. A gist of the closed session, suggested by Mr Shellum and approved by the Tribunal during it, was provided to Ms Al-Yassin at the resumed open hearing.

### *Outline of relevant issues*

25. In accordance with the Tribunal's remit to which we have referred:
  - a. the primary issue which we needed to determine in the appeal was whether the Commissioner was correct to conclude, in the Decision Notice, that the Relevant Sections were engaged;
  - b. if we concluded that any of the Relevant Sections were engaged, then we would need to go on to consider the Public Interest Test and whether the Commissioner was correct to conclude, in the Decision Notice, that the public interest favoured maintaining the applicable exemption.

## The relevant statutory framework<sup>1</sup>

### General principles - FOIA

26. Section 1(1) provides individuals with a general right of access to information held by public authorities. It provides:

*“Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.”.*

27. In essence, under section 1(1), a person who has requested information from a public authority is entitled to be informed in writing whether it holds that information. If the public authority does hold the requested information, that person is entitled to have that information communicated to them (the Duty to Disclose). However, these entitlements are subject to the other provisions, including some exemptions and qualifications which may apply even if the requested information is held by the public authority. Section 1(2) provides:

*“Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”.*

28. Accordingly, section 1(1) does not provide an unconditional right of access to any information which a public authority does hold, nor an unconditional right even to be told if the information is held by the public authority. The rights contained in that section are subject to certain other provisions of FOIA, the relevant aspects of which (for the purposes of the appeal) we address below.

### Exemptions

29. Section 2(2) addresses potential exemptions to the Duty to Disclose. That section provides:

*“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –*

*(a) the information is exempt information by virtue of a provision conferring absolute exemption, or*

*(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”.*

30. The effect of the above is that some exemptions set out in Part II of FOIA are absolute and some are subject to the application of the Public Interest Test. Where an applicable exemption is not absolute and the Public Interest Test applies, this means that a public authority may only withhold requested information under that exemption if the public

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<sup>1</sup> We acknowledge the Practice Direction dated 4 June 2024 (<https://www.judiciary.uk/guidance-and-resources/practice-direction-from-the-senior-president-of-tribunals-reasons-for-decisions/>) and particularly paragraph 9, which refers to the First-tier Tribunal not needing to specifically refer to relevant authorities. We include references to the applicable legislative framework, to provide relevant context, but have accordingly not set out details of the applicable case law.

interest in doing so outweighs the public interest in its disclosure.

31. Section 2(3) explicitly lists which exemptions in Part II of FOIA are absolute. Pursuant to that section, no other exemptions are absolute. For the purposes of this appeal, the relevant exemptions are in the Relevant Sections – namely under section 31(1). Section 31(1) is not included in that list.
32. Accordingly, in summary, an exemption in any of the Relevant Sections is a qualified exemption, so that the Public Interest Test has to be applied, even if that exemption is engaged.

### ***Section 31 – Law enforcement***

33. So far as is relevant, section 31 provides:

*“(1) 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 –*

*(a) the prevention or detection of crime,*

*(b) the apprehension or prosecution of offenders,*

*(c) the administration of justice”.*

### **Discussion and findings**

#### **Preliminary points**

34. We first address some preliminary points before turning to the main issues in the appeal.
35. As set out in paragraph 33, section 31(1) refers to “information which is not exempt information by virtue of section 30”. There was no dispute between the parties regarding section 30 not being engaged in respect of the Request and accordingly we have not addressed that point.
36. The parties referred us to various authorities from case law relating to the application of the prejudice test, the application of the Public Interest Test and other relevant principles. However, there was no relevant dispute between the parties in respect of such matters. The material issues between the parties were related to whether or not, in respect of the Request, the Relevant Sections were engaged and (if they were) whether the Public Interest Test favoured maintaining the exemptions in them or favoured disclosure. This decision therefore focuses on those issues, rather than the underlying legal principles behind them.
37. In the Decision Notice and in the appeal, the Commissioner and the SFO did not differentiate between the subsections of the Relevant Sections but instead presented one set of arguments for the engagement of all of the Relevant Sections, as well as in respect of the application of the Public Interest Test. Apart from the differences between the parties which we noted in the preceding paragraph, there was no dispute regarding the presentation of the arguments in that way – namely without differentiating for any of the individual matters or interests specified in the subsections of the Relevant Sections.



38. The positions of both the SFO and the Commissioner were largely aligned, with the Commissioner having generally come to his conclusions in the Decision Notice for the same reasons as were provided by the SFO during the section 50 investigation - and which were also relied on by the SFO in respect of the appeal. Consequently, partly for convenience and partly because of the SFO's representation in person at the hearing, the remainder of this decision generally refers only to the position or views of the SFO, but this should be taken as including reference to the Commissioner's position or views to the extent applicable - and no disrespect to the Commissioner is intended by this approach.
39. We considered whether it was necessary for us to provide a closed decision. We concluded that it would not be necessary, on the basis that the reasoning behind this decision can be sufficiently understood without needing to refer to the specific details of the closed material.

Was section 31(1)(a), 31(1)(b) and/or 31(1)(c) engaged?

*The nature of the Request*

40. We start by addressing the terms of the Request itself.
41. The witness stated, in their written statement, that the Requested Information did not only extend to the costs of the Unaoil case but also the costs broken down by year covering investigation costs, trial costs, and appeal costs and other payments including the SFO's own costs. We find that the witness, in referring to the Unaoil 'case', was referring to the SFO's investigation into Unaoil and associated individuals, including the subsequent court proceedings (and our references below to the 'Unaoil case' should be taken to mean this). We agree with that assessment of the Request by the witness, subject to one caveat - which is to clarify the basis on which the breakdown of costs was requested. We find that the Request sought the following information: (a) the total aggregate cost of the entire Unaoil case; (b) that cost broken down by reference to: (i) the costs per year; (ii) costs relating to the investigation, trial and appeal; and (iii) the SFO's own costs, including payments made to others.
42. The witness, however, went on to state in their written statement that they considered that the cost breakdown requested would entail providing details of "*staffing costs breakdowns from across operational divisions (including the intelligence division), equipment and technology, evidence storage, data management, operational expenses, training, and legal expenses*". We do not agree with that assessment of the Requested Information; nowhere in the Request does it require those details as stated by the witness. It is clear from the wording of the Request that it sought only the information (and the breakdown of the information) which we specified in the preceding paragraph. We therefore find that the witness was wrong to categorise such details as needing to be disclosed in response to the Request. Consequently, we agree with the submissions of Ms Al-Yassin that the Request was mischaracterised by the witness in that regard.
43. Other views of the SFO were also predicated on this mischaracterisation of the Request. For example, the witness considered that disclosure of the Requested Information, on its own (i.e. disregarding the 'mosaic effect', which we address below), could assist individuals to determine how much funding is placed on the intelligence stage of a case (which the witness stated was the stage of a case where the most sensitive and usually covert law enforcement techniques are utilised). However, for

the same reasons as we have given above, we find that the Requested Information did not extend to requiring details of costs relating to the intelligence stage of the Unaoil case, nor to any other specific stages or aspects of the Unaoil case. The only distinction which the Request made regarding the information sought, apart from figures per annum, was between (on the one hand) the aggregate costs relating to the investigation, trial and appeal and (on the other hand) the SFO's own costs, including payments made to others.

*The 'precedent effect' and the 'mosaic effect'*

44. The Commissioner and the SFO referred to concepts which are sometimes known as the 'precedent effect' and the 'mosaic effect'. These concepts are central to their position that the Relevant Sections were engaged in respect of the Requested Information. These concepts are perhaps best put into context for current purposes by quoting directly from the SFO's response to the appeal:

*"The SFO contends that disclosure of the requested information in this appeal would create a precedent for future FOIA requests, leading to a situation where the SFO would be required to release the costs of other cases, or would at the very least be highly likely to be required to release the costs of other cases ("the precedent effect").*

*The SFO contends that the consequence of cumulative disclosures would be to enable individuals, including suspects and defendants in the SFO's investigations and prosecutions, to construct detailed models of the SFO's work and the level of resources which the SFO allocates to any given case or category of case, causing direct harm to the SFO's ability to prosecute economic crime and protect the UK economy, in contradiction of the protections that [the Relevant Sections] are intended to provide ("the mosaic effect")."*

45. Mr Shellum's written skeleton argument referred to part of the Commissioner's guidance on the 'mosaic effect' (which the Commissioner published in respect of section 31 regarding the application of the prejudice test). The guidance we were referred to explains the concept of the 'mosaic effect' but then goes on to make two specific points. The first such point is that if a public authority complies with one request for information under FOIA, it can make it more difficult for the public authority to refuse requests for similar information in the future. The second point made is that (in essence) a public authority can take into account, when assessing prejudice, the combined effect of both: (a) the release of information which is currently requested; and (b) the release of information which the public authority could subsequently be required to provide, if the current request was complied with.
46. The first of those points is essentially referring to the 'precedent effect', which we address later below.
47. The second of those points is, in our view, an over-simplification of the 'mosaic effect' (at least in isolation, without reference to the context within which it is to be applied). We say this because it is still necessary for the prejudice test to be applied, such that there must be some causative link between the potential disclosure of the relevant information and the prejudice in question. The prejudice must also be real, actual or of substance and it must relate to the interests protected by the exemption. Further, it must be established that the applicable prejudice "would" or "would be likely to" occur – meaning that the prejudice in question is more probable than not or that there is a real and significant risk of it happening. Therefore the application of, or reliance

on, the 'mosaic effect' is of relevance only insofar as it can demonstrate, or corroborate, that the prejudice in question "would" or "would be likely to" occur.

48. Further, we also consider that that second point could be misleading by referring to the release of information which the public authority could subsequently be required to provide. This is because it appears to be based on the premise that the public authority might be obliged to disclose further information in the future, without recognition of the potential exemptions to disclosure which could be applicable. Putting this another way, it could be construed as meaning that a public authority cannot take account of applicable exemptions in respect of future requests for disclosure of relevant information.
49. That second point is, to an extent, a reflection of the 'precedent effect' argument we have referred to and which we address later below. We accept that previous disclosures of information may make it more difficult for a public authority to argue that a later disclosure of relevant information is likely to cause prejudice, particularly if there is no evidence of harm (prejudice) being caused in the past. Consequently, we acknowledge the potential difficulties regarding subsequent requests for similar information, such that a situation may arise where initial disclosures of information did not cause actual prejudice but that the risks of prejudice may increase with more disclosures, to the point where a public authority can then withhold relevant requested information. The fact that complying with one request can make it more difficult to refuse requests for similar information in the future was noted by the Commissioner in paragraph 24 of the Decision Notice. However, that paragraph went on to state that that public authorities can consider any harm which 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 – a point which has the flaws we have already identified (plus see our comments on the 'precedent effect' below).
50. We also accept (as submitted by Mr Shellum) that the application of the prejudice test is a necessarily speculative exercise, in that there is no actual disclosure of the relevant information at the time when the test is being applied and therefore that there must be an assessment of what would happen, or would be likely to happen, were the information to be disclosed. However, as we have noted, there must still be a causative link between the potential disclosure of the relevant information and the prejudice in question - and the prejudice must be real, actual or of substance, as well as relating to the interests protected by the exemption.
51. Another, fundamental, aspect of the application of the 'mosaic effect' when considering the potential disclosure of information under FOIA is that it needs to take account of other information. As the Commissioner explained in the guidance Mr Shellum referred to: *"You can take account of any harm likely to arise if someone pieced together the requested information with other information to form a broader picture"*. The relevant point is that the "other information" must be other available information. This is an important factor – if the other information is not available then it follows that it cannot be taken into account. The potential caveat to this is the point which the Commissioner and the SFO made about the obligation to release information in the future, which leads us back to consideration of the 'precedent effect', to which we now turn.
52. The witness stated that the disclosure of the requested costs would cause prejudice by

creating a “de facto” precedent for future FOIA requests, resulting in the expectation that the SFO would “be highly likely” to be required to routinely release the costs of its cases into the public domain. Similar points were made by the SFO in its response to the appeal (and were recorded by the Commissioner in the Decision Notice).

53. We consider that those views are illustrative of the concerns to which we referred in paragraphs 47 and 48. In considering any exemptions under FOIA, the test is not whether disclosure would mean that a public authority may be likely to be obliged to respond to further requests, as there is no such exemption, of course (although this may be relevant for establishing if prejudice would or would be likely to occur for the purposes of a prejudice-based exemption). Consequently, a disclosure in one case does not necessarily set a precedent for future disclosures. There is no basis in law for the SFO to be automatically obliged (or even to be ‘highly likely’ to be obliged) to disclose information relating to the SFO’s costs without consideration, on a case by case basis, of the particular facts and circumstances – which would also include consideration of any potential exemptions and the associated Public Interest Test where applicable. In that regard, the ‘precedent effect’ is a misleading concept. Rather, the focus should be on whether an applicable specific exemption is engaged - in this case, this means whether the matters specified in the Relevant Sections would, or would be likely to, be prejudiced if the Requested Information were to be disclosed. For these reasons, we agree with Ms Al-Yassin that the SFO’s reliance on the ‘precedent effect’ is misconceived.
54. The position is different with regard to the ‘mosaic effect’ which does have a recognised basis in law to some extent, as we noted in paragraphs 49 and 51 regarding the creation of, or increase in, the risk of applicable prejudice under a relevant exemption in FOIA. Therefore we acknowledge the potential relevance of the ‘mosaic effect’. The difficulty for the SFO is that its arguments regarding the ‘mosaic effect’ are largely premised on the ‘precedent effect’.
55. For example, the witness stated that releasing case costs would directly reveal how much public funding the SFO had chosen to allocate to each specific case. The illustrative context for that, provided by the witness, was based on the SFO being “compelled” to release costs information in response to multiple FOIA requests. For the reasons we have given, we do not accept that the SFO would be compelled under FOIA to disclose information pursuant to similar requests in the future, even if the Requested Information were to be disclosed. The witness conceded during the closed session that “compelled” was a strong word and considered that perhaps it would have been more appropriate to refer to being ‘ordered’ to disclose the information. However, in our view that does not alter the fundamental premise of the SFO’s arguments that future disclosure would somehow be obligatory without consideration or application of exemptions.
56. A related point, regarding the ability of the SFO to potentially rely on exemptions under FOIA should there be similar information requests in the future, would be the context of those future requests. For example, a request for information relating to a closed case is likely to be different to a request for information regarding a current (or ‘open’) case, for the purposes of both the applicable prejudice which might be relied on as well as any applicable associated Public Interest Test. The witness referred to third parties being able to recreate, by way of the ‘mosaic effect’, a complete picture of how the SFO conducted its operational work or, at least, how its cases were being resourced. This argument was the main point underpinning the SFO’s position

regarding the engagement of the Relevant Sections. We understand the SFO's concerns but we are not persuaded by that argument, for three main reasons (which we set out under sub-headings for ease of reference).

#### The first reason

57. The first reason is based on the concerns we have already raised about the reliance on the 'precedent effect' in support of that argument.

#### The second reason

58. The second reason is linked to our point in the preceding paragraph about the likely difference between the SFO's current/open cases and those which are closed. If the SFO was faced with a request for information relating to (for example) its costs and resources in respect of a current/open case it is investigating, it is not hard to envisage that certain exemptions (such as the Relevant Sections) could be engaged and that the Public Interest Test could favour the maintenance of the applicable exemptions. Obviously this would depend on the circumstances and other factors, but we are making an illustrative point. In contrast, it is more difficult to see how information in respect of a case which has been closed could be used to inform third parties about what resources would be applied for the SFO's future work or indeed as to what other cases the SFO may work on in the future.
59. The witness held a different view regarding the position for closed cases, however. They considered that disclosure of costs information pertaining to closed cases could allow third parties to create a picture of the SFO's work and the level of resources which it allocates to any given case and that this could "point toward" the details of the investigative tools, techniques and powers available to the SFO. The witness also explained that closed cases are often subject to being re-opened at a later date, including where there has been a 'Victims Right to Review' of an original decision to close a case. We accept that closed cases could be subsequently re-opened. However, we find there was no other evidence to support the witness's view that disclosure of costs information could allow third parties to gain the level of information and insight which the witness asserted. Even if we accepted the witness's evidence on this issue, something more is required than merely 'pointing towards' matters. As we have referred to, the law requires that the applicable prejudice must be 'real, actual or of substance' and we find that this has not been established.
60. We also find (and as was argued by Ms Al-Yassin), that the context of the Unaoil case is a very specific one, as it was an investigation where the SFO was found wanting in various ways. In our view, that serves to distinguish the Request from future information requests which may be made about the SFO's other investigations. The SFO argued that the Unaoil case may be reopened but, notwithstanding our acceptance that closed cases may be re-opened, it seems to us that that is highly unlikely in respect of the Unaoil case, given the specific circumstances of that case and its associated failings (and particularly given that the convictions which were secured by the SFO were later quashed by the Court of Appeal). Consequently, the particular circumstances of the Unaoil case, which is not an open investigation, is such that we find that there is no weight behind the SFO's arguments that disclosure of the Requested Information would mean that other information would have to be disclosed in the future. Again, there was also no evidence to support those arguments. In this respect, we agree with the submissions of Ms Al-Yassin that the SFO's arguments in

respect of the engagement of the Relevant Sections are based on extrapolated prejudice from its own expectations or fears, rather than from any evidential basis.

### The third reason

61. The third reason is related to the nature of the Requested Information and the Withheld Information. There are two component parts to this reason.
62. First, as we noted in paragraphs 42 and 42, the Request did not seek the level of detail which the witness referred to, but rather certain aggregated information (albeit broken down into segments). Accordingly, there is an inherent flaw in the SFO's position that the Requested Information (which does not require the focussed costs details as asserted by the witness) is likely to be combined with publicly available information in order to establish that the prejudice specified in the Relevant Sections would, or would be likely to, be caused. That position is also partially based on the SFO's reliance on the 'precedent effect', as the witness's view about publicly available information included information from future FOIA requests.
63. Secondly, having assessed the Withheld Information (including exploring it with the SFO in our closed session), we find that it was actually very generic in nature. It was set out under very broad headings, without any underlying detail. We simply could not reconcile the Withheld Information with the prejudice in the Relevant Sections as contended by the SFO, even taking into account its 'mosaic effect' arguments. The witness stated (in a closed element of their written statement) that revealing the SFO's costs would indicate certain specific line items of expenditure which would in turn (as referred to in the open witness statement) reveal certain sensitive information which could be damaging to the SFO's activities. Whilst we understand the premise of the concerns which the witness outlined, this was not reflected in the evidence before us - particularly with regard to the Withheld Information, which contained no such indication (nor was there any other evidence to support that view with regard to any other information).
64. During the closed session, we asked the witness about the lack of detail contained in the Withheld Information and they explained that, in essence, based on how matters were recorded, it would be difficult to gather information which went into more detail for the purposes of the distinct limbs of the Request. This demonstrates (and we find) that the Withheld Information did not even contain the level of detail which the witness had asserted in respect of their assessment of the Request (as referred to in paragraph 42). We would go so far as to say that we were surprised by the sparsity of the Withheld Information.
65. We would also comment on a further aspect of the SFO's position regarding the engagement of the Relevant Sections. The witness stated that (based on their assessment of the Request) individuals would be able to use the Requested Information regarding costs in combination with other publicly available information to "*gain greater understanding of every aspect of how the SFO investigates and prosecutes serious fraud, corruption and bribery*" (emphasis added). We find that such contention was not corroborated evidentially, including (as we noted in the preceding paragraph) by the nature of the Withheld Information itself. Likewise, whilst we acknowledge and accept the witness's evidence that the SFO has received twelve FOIA requests for costs information since January 2023 and that there is a high likelihood that similar requests will be made in the future, we find that there was no evidence to support the

SFO's position generally that the Requested Information could be combined with any other information in the public domain, such that the prejudice in the Relevant Sections is established. This is so even when taking into account the evidence and submissions regarding the SFO's limited size and the focussed nature of its work.

66. We would summarily conclude by stating that that the prejudice specified in the Relevant Sections has not been established, including in respect of the lower threshold of prejudice (namely "would be likely to", rather than "would" prejudice). Rather, the SFO's position was essentially that a precedent would be created, should the Requested Information be disclosed, whereby responses would have to be given to future similar requests for information – and that the relevant prejudice was caused by the cumulative effect of such future disclosures. The Commissioner recorded, in paragraph 17 of the Decision Notice, that the SFO explained this position as follows:

*"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')."*

67. For the reasons we have given, we find that the SFO's reliance on the 'precedent effect' is flawed and that its position in respect of the prejudice in the Relevant Sections was underpinned by its mischaracterisation of the Request. There was also a lack of evidence to support the SFO's arguments, which we find were largely based on mere supposition. We accordingly find that SFO and the Commissioner have not established that the disclosure of the Requested Information would, or would be likely to, prejudice the matters specified in the Relevant Sections.
68. For all of the above reasons, we find that the Relevant Sections were not engaged in respect of the Request.
69. As we have concluded that none of the Relevant Sections were engaged, it is not necessary for us to go to consider the Public Interest Test.

### **Final conclusions**

70. For all of the reasons we have given, we find that the Decision Notice erred in law in determining that the Relevant Sections were engaged in respect of the Requested Information.
71. We therefore allow the appeal and we make the Substituted Decision Notice as set out above.

Signed: Stephen Roper  
Judge of the First-tier Tribunal

Date: 20 November 2024