

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 12th February 2008

Public Authority: Her Majesty's Revenue & Customs ('HMRC') (formerly Her Majesty's Customs & Excise 'HMCE')
Address: 1 Parliament Street
London
SW1A 2BQ

Summary

The complainant requested all the documents held by the public authority in the 'jury bundle' from a specific trial. HMRC refused to disclose the requested information under section 30 of the Act. The Commissioner has investigated and found that section 30 is engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure of the requested information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant has advised that on 18 January 2005 he made the following request for information to Her Majesty's Customs and Excise (HMCE):

"I request that a copy of documents containing the following information be provided to me:

- *The full names, titles and contact information for all witnesses in the case R v Abu Bakr Siddiqui, prosecuted on behalf of HMCE by Mr. Mukul Chawla and Ms. Joanne Cumbley in Southwark Court in August 2001.*
- *Witness statements of all those who testified at the Siddiqui trial.*
- *A full transcript of the Siddiqui trial.*

- *Copies or detailed descriptions of any exhibits introduced at the Siddiqui trial.*
 - *All documents, physical and / or electronic, relating to the investigation of Abu Bakr Siddiqui, his family, and associates including but not limited to notes, reports, memorandum, photos, audio and / or video recordings, email and / or text messages.”*
3. On 10 February 2005 HMCE responded to the request disclosing some information but refusing to disclose the remaining information. In relation to the first point of the request for details of the witnesses and the second part of the request for the witness statements HMCE stated the information was exempt under section 41 of the Act. In response to the third point, for a copy of the full transcript, HMCE stated it did not hold this information but told the complainant where he may find this. In response to the fourth and fifth points for copies or descriptions of the exhibits and all documents relating to the investigation HMCE stated it considered the information was exempt under section 30 and that the public interest favoured maintaining the exemption.
 4. On 17 February 2005 the complainant requested an internal review of this decision. The complainant highlighted that most of the information requested was presented in open court and is being requested to gain a better understanding of the enterprises of the defendant. The complainant queried the application of section 41 to the names and address of the witnesses and their statements stating that the witnesses testified in open court and querying how the information can therefore be classed as confidential. In relation to his request for a copy of the court transcript the complainant acknowledged that this was not held by HMCE but stated that as a party to proceedings HMCE was entitled to a copy of it and he requested HMCE obtain a copy and then copy it to him. In relation to the information considered exempt under section 30 the complainant queried the application of the public interest stating that in respect of the exhibits the information has already been made available to the public during the trial. Regarding the materials relating to the investigation he stated disclosing the information would do no harm to the public.
 5. HMRC completed its internal review and communicated the outcome to the complainant on 4 July 2005. HMCE stated that a list of witnesses had already been provided to the complainant and that their contact details were provided to HMCE in the knowledge that personal details would not be released and was therefore exempt under section 41 and 30 of the Act and that the public interest in non-disclosure outweighs the public interest in disclosure. HMCE stated that it now considered the witness statements were exempt under section 30 and in part section 41. HMCE also informed the complainant that it now felt that section 21 applied to all the information recorded in the transcript and that this document was reasonably accessible to the complainant, albeit on payment, from Southwark Crown Court. In relation to the remaining information HMCE stated it was satisfied that the information was exempt under section 30 and that the public interest favoured maintaining the exemption.

The Investigation

Scope of the case

- 6 On 19 July 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that the information requested is not contained in the trial transcripts as these are only partial descriptions of the items. He also asked the Commissioner to consider the application of section 21 stating whilst he had obtained a copy of the transcripts that it was not reasonably accessible as it was only made available after a long and difficult process from Southwark Crown Court.
7. It is also important to clarify that the complainant submitted a request to HMCE and HMCE dealt with the request and conducted the internal review. However, at the point that the Commissioner began investigating this complaint HMCE's functions had been transferred to Her Majesty's Revenue and Customs ("HMRC") which was established on 18 April 2005. Therefore the Commissioner has corresponded with HMRC about this case. The Commissioner is satisfied that it is appropriate to issue a decision notice to HMRC in this matter as the responsible public authority.

Chronology

8. On 2 March 2006 the Commissioner wrote to HMRC to ask if HMRC had considered the application of section 32 to the withheld information.
6. HMRC responded on 12 April 2006, HMRC stated they did not believe they could rely on section 32 to withhold the information.
7. HMRC provided further information on 5 May 2006. HMRC informed the Commissioner that they had located the material in question and that the material (jury bundles) comprises of witness statements, documentary evidence of search of premises and records of interviews with various parties. In relation to its application of section 21 HMRC reiterated that the Court transcript was reasonably accessible to the complaint and that it understood the complainant has now received this information from the Court. HMRC stated it believed that the arguments put forward in its internal review of 4 July 2005 regarding the application of section 30 and 41 still applied. In addition to this HMRC now considered that section 40 also applied to withhold certain witness statements within the jury bundle. In relation to section 32 HMRC stated that the information held was gathered by HMRC in connection with its investigative duties and only subsequently filed with the court, it therefore considered section 32 could not apply.
8. The Commissioner responded on 22 May 2006 asking HMRC for more information describing how and in what circumstances the information was obtained. The Commissioner spoke to HMRC on 1 June 2006; HMRC outlined its role in relation to this case and its understanding of the applicability of section 32.

Following this telephone call HMRC confirmed in writing the circumstances under which it had obtained the information and background to the role of HMRC in relation to this case and cases of a similar nature.

9. On 8 June 2006 the Commissioner wrote to HMRC informing it that following a review of the arguments put forward he agreed that section 32 could not be used to exempt the information requested in this case.
10. On 11 December 2006 the Commissioner viewed the withheld information in situ at HMRC and on 14 December 2005 the Commissioner wrote to HMRC with some further questions.
11. On 14 February 2007 HMRC replied. In its response HMRC provided a more detailed breakdown of the exemptions as applied to groups of information and the public interest test considered against each exemption. HMRC also stated that it now considered section 44 applied as section 18 of the Commissioner's for Revenue and Customs Act (CRCA) applied. In the response HMRC had reviewed some of the information and indicated to the Commissioner that one of the documents could now be disclosed.
12. The Commissioner responded on 3 August 2007. The Commissioner queried with HMRC the applicability of the CRCA as this act came into force after the complainant's request under the Act. The Commissioner also asked HMRC to provide a clearer breakdown for each document or group of documents held as to which exemptions apply and the public interest test. In relation to the document HMRC had found could now be disclosed, the Commissioner asked if this had been disclosed and for HMRC to consider if another document could also now be disclosed.
13. Following a number of telephone conversation with HMRC the Commissioner wrote again on 4 September 2007 outlining the information still required. The Commissioner reiterated the concerns regarding the application of section 44 and again queried if the document identified for disclosure had now been disclosed to the complainant. In addition the Commissioner included a table which he asked HMRC to complete which would provide more clarity to the exemptions applied to the information.
14. HMRC replied to the Commissioner on 11 October 2007. HMRC explained that it was no longer relying on section 44 as it agreed that it could not be relied upon as the CRCA only came into force after the request for information was made. HMRC also stated that it no longer sought to rely on section 21 but did consider that section 40 was engaged for some of the information, including interviews under caution and other documents that either identifies individuals or from which an individual's identity could be deduced.
15. HMRC also explained that it was now willing to disclose two documents from within the 'bundle' (as referred to in paragraph 7), HMRC explained that although it considered they were also exempt under section 30 they were also already in the public domain so the public interest arguments in withholding the documents

favour disclosure. HMRC further explained that all but 8 documents were obtained coercively.

16. Following a telephone conversation with the Commissioner, HMRC reviewed further some of the documents being withheld. As a result of this on 21 November 2007 HMRC acknowledged that a further six pieces of information could be disclosed to the complainant.

Findings of fact

17. The remaining information is being withheld under section 30(1) (a), 30(2) (a) and 40. HMRC have used the Index to Exhibits to reference their application of the exemptions this is split into 21 sections A-T. In the exhibits are three witness statements.

Exemption: Section 30 'Investigations and proceedings conducted by public authorities'

18. Section 30(1) (a) provides that information held by a public authority is exempt information if it has at any time been held by the public authority for the purposes of any investigation which the public authority has a duty to conduct with a view to it being ascertained: whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.
19. HMRC have explained that all the information being withheld has been obtained and recorded by HMRC and was therefore held by HMRC for the purposes of a criminal investigation into export licensing offences under Sections 68(2) and 170 (2) of the Customs and Excise Management Act 1979.
20. The Commissioner is satisfied that the withheld information was held for the purpose of ascertaining whether a person should have been charged with an offence under the Customs and Excise Management Act 1979.

Public Interest Test

21. Section 30 is a qualified exemption and the Commissioner must therefore consider if the public interest in maintaining the exemption outweighs the public interest in disclosure of the requested information.
22. HMRC explained that it considered that in relation to all the withheld information that the public interest favoured maintaining the exemption for the following reasons:
 - Release of the information could prejudice an on-going HMRC investigation into the supply of components for nuclear programmes including related activities of British citizens. Its inquiries are continuing and it is unable to make any further comment as this may prejudice any subsequent trial.
 - Individuals will be less likely to co-operate with the police and law enforcement agencies

- Although taken in isolation the exhibits appear innocuous, taken together with other information available in the court transcript or the public domain, it may reveal future possible investigative leads or information about those who were associated with the case but not prosecuted.
23. In relation to the information obtained coercively HMRC argued that it is not in the public interest to make public personal information gathered as result of coercive search powers, over and above that necessary for investigating and prosecuting crime. HMRC stated that this may have particular impact on innocent third parties, who may be considered guilty by association. HMRC also pointed out that some information if disclosed would, when taken in whole or in part with other material reveal: HMRC investigation methods and techniques (for example, tracking of fax numbers, referencing systems and handwriting analysis); and future possible investigation leads (for example, methods of working used by the defendant and his associates).
 24. HMRC explained that the information reveals a system of working by the defendant and his associates which may harm the further prevention or detection of crime. Also, companies supplying goods to the defendant and his associates are legitimate companies and would not have been aware of the purpose that the defendant had in mind for their goods. Some correspondence within the 'jury bundle' is with these companies and it considered that it would be contrary to the public interest to publicly disclose information relating to third party companies who would then be considered guilty by association.
 25. HMRC added that it is less likely that individuals would wish to co-operate with the police and law enforcement agencies if they were aware that information they provided could easily be made public. More specifically, in relation to the witness statements included in the bundle, the witnesses could be placed at the risk of harm if their evidence was place in the public domain.
 26. HMRC acknowledged that there was a general public interest in openness and accountability of government and in the transparency of the criminal justice system; to aid understanding of why the jury reached a particular conclusion. However, HMRC also noted that criminal trials are open to the public and can be openly reported, in this way justice can be seen to be done. HMRC explained that court files and material produced in court are not routinely made available to the general public and transcripts of court proceedings have to be obtained from the court.
 27. In his request for an internal review the complainant argued that disclosure was in the public interest. He stated that the can be no harm in releasing information that has already been present in open court and is in the public record. The complainant stated that much of the information requested made it into the open court proceedings in the form of testimony and exhibits and that since the public interest was not harmed by this disclosure there can be no harm in it being provided under the Act.
 28. The Commissioner has viewed the information and it is a matter of fact that most of the information has not been disclosed in open court and the information

contained in the bundle goes beyond that contained in the transcripts. Notwithstanding this it is the Commissioner's view that in practice public knowledge of issues is only short lived and may be limited to only a small number of people. Even where cases are reported in the newspapers this does not lead to the establishment of a comprehensive searchable database containing the information.

29. HMRC believes the public interest lies in protecting the process required for the effective delivery of justice. The provision of information to HMRC remains crucial to the investigation process, the prosecution of offenders and to the protection of the integrity and effectiveness of the criminal justice system as a whole. HMRC explained that although information contained in *inter alia*, witness statements, testimony and exhibits may have been adduced in open court, the context of where information was disclosed must be taken into consideration. Information disclosed during court proceedings is clearly not detrimental to the effective delivery of justice and is central to successful prosecutions. However, the same information disclosed from the original investigation material and witness statements could prejudice future investigations by HMRC and indeed the administration of justice, which would be contrary to the public interest.
30. The Commissioner has considered the general public interest in promoting openness, accountability and disclosing information which would inform the public of ongoing issues of investigation. However, the Commissioner finds that the public interest would not be best served by disclosing information which could prejudice future investigations by HMRC.
31. The Commissioner finds that the exemption at section 30 is engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure of the requested information.

The Decision

32. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

13. The Commissioner requires no steps to be taken.

Right of Appeal

19. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 12th day of February 2007

Signed

**Richard Thomas
Information Commissioner**

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