

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 April 2012

**Public Authority:** Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

#### Decision (including any steps ordered)

---

1. The complainant has requested a file recording a 1961 trial for a breach of the Official Secrets Act. Some of this file was withheld under the exemption provided by section 23(1) (information relating to, or supplied by, security bodies). The Commissioner's decision is that the MoJ applied section 23(1) correctly and so it is not required to disclose any further parts of this file.

#### Request and response

---

2. On 14 June 2011, the complainant wrote to the MoJ and requested information in the following terms:

*"I'm asking for one file to be made open...CRIM 1/3650".*

This file relates to the 1961 trial of George Blake for breaching the Official Secrets Act.

3. The MoJ responded substantively on 5 August 2011. The file was disclosed, but with some of the content redacted under the exemptions provided by the following sections of the Act:

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

24(1) (national security)

40(2) (personal information)

4. Following an internal review the MoJ wrote to the complainant on 23 September 2011. It stated that the partial refusal of the request was upheld.

### Scope of the case

---

5. The complainant contacted the Information Commissioner on 29 September 2009 to complain about the way his request for information had been handled. When requesting an internal review the complainant specified four redactions that he wished the MoJ to reconsider. At the outset of the investigation of this case the complainant was contacted to ascertain if he wished this investigation to cover only those redactions that had been specified when the complainant asked for internal review.
6. The complainant responded to this on 27 October 2011 and confirmed that he wished the scope of the investigation to cover only those redactions he had specified when requesting an internal review. Whilst the complainant had specified that he wished the Information Commissioner to reconsider the citing of section 24(1) in relation to these redactions, during the investigation the MoJ advised that it was now citing section 23(1) in relation to all of the information previously withheld under section 24(1). This notice therefore concerns section 23(1).
7. During the investigation it was noted that there did not appear to have been any redaction at one of the points specified by the complainant. The MoJ confirmed that there had been no redaction at that point. The complainant subsequently confirmed that he accepted that no redaction had been made at that point and that it was not necessary for this to be covered in the decision notice.
8. The following analysis relates to the redactions specified by the complainant as follows:

*"In CRIM 1/3650, in the statement on oath from Special Branch Officer 1, he starts to refer to Exhibit 4. He says 'In Ex 4 the diary for 1947...' - and then there is clearly a large chunk of his statement (about the diary of 1947) redacted. I'd like that passage reinstated so I can read it - accepting the strictures about names.*

*Clearly there is a large chunk redacted in the latter stages of the statement from SIS officer Mr 'A', from the words 'The symbols...' It's hard to see why this has been kept back, and I'd like to apply for it to be reinstated.*

*Finally, the statement by SIS officer Mr 'C' - about Blake's time in Berlin - has been almost completely redacted. Again, bearing in mind the strictures of Section 24(1) and Section 40, is there any reason why this should be so?"*

## Reasons for decision

---

9. Section 23(1) of the FOIA states that information is exempt if it was supplied by or relates to any of a number of bodies involved in national security matters and that are listed in section 23(3). Consideration of this exemption requires reaching a conclusion as to whether it is accurate to state that information was supplied by, or relates to, any of the bodies specified in section 23(3).
10. Section 64(2) of the FOIA provides that section 23(1) is qualified by the public interest in relation to information that is 30 or more years old and that has been transferred to the National Archives. This means that in relation to information that meets those two conditions, section 23(1) will only prevent disclosure where the public interest in the maintenance of that exemption outweighs the public interest in disclosure.
11. In this case, whilst the information in question is more than 30 years old, as was stated by the MoJ in the internal review response and as is noted on the National Archives website, it has been retained by the MoJ, rather than having been transferred to the National Archives. This means that section 23(1) remains an absolute exemption in relation to the information in question and so it is not necessary to consider the balance of the public interest in this case.
12. In relation to two of the specified redactions, the complainant noted in his wording that this records witness statements given by members of one of the bodies specified in section 23(3). The copy of the file supplied to the Commissioner's office by the MoJ corroborates this. The conclusion of the Information Commissioner in relation to these redactions is therefore that this information clearly both relates to and was supplied by a body specified in section 23(3).
13. The remaining redaction is from a statement given by a police special branch officer. No part of the police is listed in section 23(3), meaning that it is less clear that section 23(1) is engaged in relation to this redaction. The explanation provided by the MoJ on this point is that the redacted content records information that was supplied to the police officer in question by a section 23(3) body.

14. The Information Commissioner has also taken into account here the context of this redaction; this concerns an investigation into a breach of the Official Secrets Act and other parts of this information clearly do relate to a section 23(3) body. Taking this context into account the Commissioner accepts that there is a sufficiently high likelihood that this redaction does record information supplied to the police by a section 23(3) body.
15. In relation to all of the three redactions specified by the complainant the conclusion of the Commissioner is, therefore, that the exemption provided by section 23(1) of the FOIA is engaged. The MoJ is not, therefore, required to disclose this information.

## Right of appeal

---

16. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

17. 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.
18. 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**