

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2013

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

Decision (including any steps ordered)

1. The complainant requested information relating to the financial costs and benefits of implementing the draft Communications Data Bill. The Commissioner's decision is that the public authority was entitled to withhold the information within the scope of the request on the basis of section 23(1) FOIA.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 15 June 2012, the complainant wrote to public authority and requested information in the following terms:

'In the impact assessment of the draft communications data Bill (Page 8) there is the following passage:

"benefits are assessed are [sic] operational stakeholders, and using a model validated by HM Treasury, translated into economic values"

I would like to request:

- 1) *Details of the model validated by HM Treasury*
- 2) *The full breakdown of the £1.8bn cost figure provided*
- 3) *The full breakdown of the £5-6.2bn benefits figure*

4. The public authority responded on 12 July 2012. It confirmed it held the requested information but explained that it was exempt from disclosure on the basis of sections 23(1), 31(1)(a) and 43(2) FOIA.
5. Following an internal review the public authority wrote to the complainant with details of the outcome of the review.¹ It upheld the original decision above in full.

Scope of the case

6. On 31 July 2012, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that the requested information should be disclosed on the following grounds:

'.....ministers and officials have sought to rely on cumulative figures to justify the proposals contained within the Draft Communications Data Bill. An essential part of policy making is being able to demonstrate credibility, something that cumulative figures do not.

.....it should be possible to categorise the monies in a way which does not impinge commercial confidentiality or security by using headings for groups of costs.

...I also expect that there are significant costs which will not be either commercially sensitive or a security risk. Referring to the impact assessment published alongside the Bill, it states HMRC and asset recovery are to be two significant financial beneficiaries, this information would neither be commercially sensitive or concern security.

7. He suggested that a redacted version of the requested information could be disclosed.
8. The scope of the investigation therefore was to determine whether the public authority was entitled to withhold all of the requested information on the basis of the exemptions at sections 23(1), 31(1)(a) and 43(2) FOIA.

¹ The relevant letter is undated.

Reasons for decision

Section 23(1)

9. The Commissioner first considered whether the public authority was entitled to rely on the exemption at section 23(1). Unlike the exemptions at sections 31(1)(a) and 43(2) which are qualified, section 23(1) is an absolute exemption. A public authority is not required to carry out a public interest test if it determines that an absolute exemption is engaged. The requirement to conduct a public interest test applies to qualified exemptions. Therefore, in considering the application of section 23(1), the Commissioner has to only satisfy himself that the requested information engages the exemption. If the exemption is engaged, there is no requirement for him to then consider whether there was in any event, a public interest in disclosing the requested information.

10. Section 23 (1) and (2) state:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)

A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60², be conclusive evidence of that fact.'

11. Section 23(3) contains a list of bodies dealing with national security matters. Needless to say, in cases where section 23(1) has been relied upon, the public authority considers the relevant information highly sensitive. Therefore, the Commissioner has to be careful that in providing reasons for his decision, he does not inadvertently reveal any information considered to be sensitive, not least the withheld information. The Commissioner therefore appreciates that the brevity of his reasoning below might prove frustrating to the complainant. It is however an unavoidable consequence of the required approach to section 23 cases.

² A certificate may be appealed by the Commissioner or an applicant by virtue of section 60.

12. To successfully engage the exemption at section 23(1), a public authority must be able to demonstrate that the relevant information *was directly or indirectly supplied by, or relates to* any of the bodies listed at section 23(3).
13. The public authority explained that the draft Communications Data Bill seeks to enact legislation to enable the collection of communications data fundamental to effective policing to combat threats posed by organised groups and to maintain national security. It however stressed that the communications data in this context would not include the content of emails or phone conversations. It argued that because the purpose of the draft Communications Data Bill is to safeguard the public, any disclosure that would inhibit or undermine that aim must be considered contrary to the public interest.³
14. The public authority confirmed that the withheld information was supplied by, or relates to, bodies listed at section 23(3). It explained that, in the circumstances, it could not provide the withheld information to the Commissioner. Instead, it provided a letter from a Senior Civil Servant (SCS) with the experience and authority to validate the origin of the withheld information. The SCS assured the Commissioner that the withheld information was either received from one of the bodies listed in section 23(3) or is directly related to them. He provided the Commissioner with a broad description of the nature, content and provenance of the withheld information. He further explained that the withheld information could not be separated or redacted in the manner suggested by the complainant.
15. The public authority also made detailed submissions to the Commissioner in support of its view that the withheld information *relates to* the bodies listed in section 23(3). Given the sensitive nature of the submissions, the Commissioner considers it sufficient to only mention the following in this notice. According to the public authority, in view of the role which the relevant subject matter (i.e. communications data) has played in security service operations and organised crime investigations over the last decade, it logically follows that the withheld information relates to the bodies listed in section 23(3). For the avoidance of doubt, the Commissioner considers all of the submissions relevant. He has however chosen to reproduce a small and less sensitive

³ There is no misunderstanding by the public authority that section 23(1) is an absolute exemption, it was simply anchoring its arguments for non-disclosure (with respect to all the exemptions cited) against the inherent public interest in safeguarding the public.

part of the submissions that broadly reflects the public authority's overall view regarding this element of the exemption.

16. The Commissioner accepts that in the circumstances of this case, the assurance he received from the SCS regarding the origin of the withheld information is sufficient. He agrees that the withheld information relates to the bodies listed in section 23(3) for all of the reasons provided by the public authority. He also accepts that the withheld information cannot be separated or redacted in the manner suggested by the complainant. Although the letter from the SCS is not a certificate within the meaning of section 23(2), the Commissioner accepts that in the circumstances of this case, a sufficient explanation as to the nature of the withheld information has been given for him to be satisfied that section 23(1) is engaged.
17. The Commissioner therefore finds that the withheld information is exempt from disclosure on the basis of section 23(1) because it was supplied by, or relates to, bodies listed at section 23(3).
18. In view of his decision that section 23(1) was correctly engaged, the Commissioner did not consider the applicability of the exemptions at sections 31(1)(a) and 43(2).

Right of appeal

19. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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
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SK9 5AF