

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2013

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

Decision (including any steps ordered)

1. The complainant requested figures for each of the past five years about the number of counterfeit goods seized at the UK borders and action taken against individuals importing them. HO provided some information but also withheld some information relying on section 31(1)(a) FOIA and the associated public interest balancing test. Before the Commissioner, HO additionally relied upon the section 31(1)(b) exemption.
2. The Commissioner's decision is that HO correctly relied on the exemptions in section 31(1)(a) and (b) FOIA and decided correctly that the balance of the public interest lay in maintaining the exemptions. HO breached section 17(1)(b) in not relying on section 31(1)(b) earlier. The Commissioner does not require HO to take any action to comply with the legislation.

Request and response

3. On 13 December 2012, the complainant wrote to HO and requested information in the following terms:
 1. *Please provide figures for the following questions for each of the past 5 years:*
 - a) *Number of counterfeit goods seized, broken down by the country they were imported from and broken down by type of counterfeit goods seized.*
 - b) *Action taken against individuals for importing counterfeit goods e.g. number of individuals proceeded against, found guilty and cautioned broken down by type of counterfeit goods seized.*

UK borders are protected by Border Force, the relevant operational command of the Home Office (HO).

4. The HO responded on 15 January 2013. HO stated that, as regards question a), the section 21 FOIA and section 31(1)(a) FOIA exemptions applied and exempted HO from providing the information. HO did however provide some of the information requested in request a) and directed the complainant to the annual reports by the Intellectual Property Crime Group for some published information within the scope of the request. HO withheld relevant information relying on the section 31(1)(a) FOIA exemption. As regards question b), HO said it did not hold the information requested.
5. Following an internal review the HO wrote to the complainant on 14 February 2013 saying that the section 31(1)(a) exemption had been applied correctly to the information falling within the scope of the information request that was still being withheld.

Scope of the case

6. The complainant contacted the Commissioner on 15 February 2013 to complain about the way the request for information had been handled. In making the complaint to the Commissioner, the complainant only complained about the HO handling of part a) of the request. The complainant said in evidence that disclosure of the withheld information would focus attention on areas where further action was needed.
7. The Commissioner considered the application of the section 31(1)(a) and 31(1)(b) FOIA exemptions to the information being withheld by HO about the numbers of seizures of counterfeit goods and their countries of origin for the financial year 2011/ 12 and the two previous years. He also considered the associated public interest balancing test.

Reasons for decision

Section 31 law enforcement

8. Section 31(1)(a) of FOIA provides an exemption where disclosure of information would, or would be likely to, prejudice the prevention or detection of crime.
9. Section 31(1)(b) FOIA provides an exemption where disclosure of information would, or would be likely to, prejudice the apprehension or prosecution of offenders.

10. Consideration of these exemptions is a two-stage process. First, in order for the exemptions to be engaged it must be at least likely that disclosure would prejudice the prevention or detection of crime and the apprehension or prosecution of offenders.
11. Secondly, the exemptions are subject to a public interest balancing test. The effect of this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.

The applicable interests

12. In this case, the Commissioner understands the applicable interests to be the effective and efficient operation of the controls operated by HO's UK Border Force and intended to protect UK citizens from the import of counterfeit goods, allied to the apprehension and prosecution of offenders. Harm would include loss of revenues that arise from relevant import duties and, in many cases, exposure of the public to the risks arising from the trading of illicit goods. Further risks to the effective working of controls arise from any reduction in the chances of offenders being apprehended and prosecuted.

The nature of the prejudice

13. HO told the Commissioner that it operates a risk based system of border controls intended to ensure that its staff and other resources are deployed to greatest effect. HO said that the volumes of counterfeit goods seized during the year varied by the type of goods and the country of origin of consignments. Disclosure of the withheld information would give individuals, including those wishing to circumvent border controls or law enforcement assets and methods, the same insights as those managing the deployment of HO staff who are seeking to protect the UK, including insights into those methods put in place to detect crime and apprehend offenders. Disclosure would also enable individuals to build a picture of border force deployments or likely deployments.
14. HO drew attention to the 'mosaic' effect: that releasing pieces of a larger data set, in response to various requests, would enable a broader picture to be drawn up. Disclosure of the requested information, if put together with responses to other related requests, would enable potential offenders to assess the UK's border force controls with greater certainty and assist efforts to evade detection.

The likelihood of the prejudice occurring

15. HO told the Commissioner that harm from the disclosure of the relevant information would be very likely and, with any further disclosures, almost certain to occur. The Commissioner accepts that evidence from HO; it follows that disclosure would undermine and prejudice law

enforcement methods for detecting crime and the subsequent apprehension and prosecution of offenders.

Is the exemption engaged?

16. The complainant told the Commissioner that disclosure of the information requested would assist in focusing attention on areas where further border control action is needed and promote public reassurance. The complainant said, without supporting evidence, that revealing the country of origin of counterfeit products did not mean it would be possible for ill-intentioned individuals or organised criminal gangs to draw conclusions regarding the UK Border Force's risk based deployments, or that disclosure would allow criminals to have a better insight into how border controls operated.
17. HO told the Commissioner that disclosure of the requested information might enable those intent on wrongdoing to deduce the level of border protection on goods from particular locations. HO considered that this might enable them to subvert the operational effectiveness of border and other controls by changing their behaviour (such as entering the country from destinations presumed to have a lower level of scrutiny or presence for these types of detection), thereby putting law enforcement at risk and thus directly engaging the section 31(1)(a) and (b) FOIA exemptions. HO added that whilst the withheld data set is only a part of the intelligence data used to determine deployments, disclosure of this information would give clear insight and allow individuals to begin to build a picture of border staff deployments or potential deployments. More widely, data on the seizures of counterfeit goods would allow inferences to be made regarding other types of seizures, including those with serious and organised criminal connections (such as drugs or weapons).
18. The Commissioner has examined the withheld information and, having done so, is persuaded by the evidence which HO provided to him. He found particularly compelling HO's case that, whether standing alone or as part of a larger 'mosaic' pattern, the withheld information would provide requestors with valuable insights into the operation of UK border controls and likely related law enforcement priorities. He decided therefore that the section 31(1)(a) and 31(1)(b) FOIA exemptions were engaged.

The public interest

19. Since section 31 FOIA is a qualified exemption it is subject to a public interest test under section 2(2)(b) FOIA. This favours disclosure unless, *"in all the circumstances of the case, the public interest in maintaining*

the exemption outweighs the public interest in disclosure of the information”.

Public interest arguments in favour of disclosing the requested information

20. The complainant said that disclosure would focus attention on areas needing further action and promote public reassurance.
21. The Commissioner has seen that there is a significant public interest in the UK having in place effective and efficient border controls and means of apprehending and prosecuting those whose design it is to offend. It follows that there is a need for transparency and accountability by HO for those responsible for implementing the controls and that disclosure would reassure the public that there were effective measures in place to resist the import of counterfeit goods at UK borders.

Public interest arguments in favour of maintaining the exemption

22. HO told the Commissioner that disclosure of the withheld information would undermine and prejudice law enforcement methods for detecting crime and subsequently the apprehension and prosecution of offenders.
23. HO said that maintaining safe borders was integral to protecting the UK against criminals and that disclosure would cause prejudice, something which was not in the public interest. Disclosure would potentially undermine seizures of counterfeit goods, the entry of which damages UK retail industries, legitimate workers, and producers of goods. Disclosure would provide a wider picture to potential offenders.
24. HO was also concerned that disclosure would set a precedent which could lead to pressure for the future disclosure of other operationally sensitive data. HO said that there was a very strong public interest in preventing individuals intending to circumvent law enforcement methods from having access to information which could assist them, for example in building a pattern of resources and deployments in place at UK borders.

Balance of the public interest arguments

25. In reaching his decision in this case, the Commissioner is mindful of the fact that border controls and the circulation of counterfeit products are issues of concern to the public. He therefore gives some weight to the argument that disclosure in this case would further the understanding of, and participation in, public debate of issues of the day.
26. However, he also recognises the strong public interest in preventing individuals intending to circumvent border controls from having access to information which would assist them in building an understanding of

the pattern of border protection activity and of past successful operations against the importers of counterfeit goods.

27. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of disclosure do not equal or outweigh those in favour of maintaining the exemption.

Other matters

28. In not relying on the section 31(1)(b) FOIA exemption until after the start of the Commissioner's investigation, HO breached section 17(1)(b) FOIA.

Right of appeal

29. 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

30. 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.
31. 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

Jon Manners
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF