

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2016

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested a list of local authorities who do not have a current Public Service Network certificate as at the date of his request. The Cabinet Office refused to provide this citing FOIA section 31(1)(a) (law enforcement exemption) as its basis for doing so. It upheld this at internal review.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 31(1)(a) as its basis for refusing to provide the requested information.
3. No steps are required.

Request and response

Background

4. The Public Service Network ("PSN") facilitates secure communication across the public sector.¹ According to the .gov website:

"The PSN uses a 'walled garden' approach, which enables access to Internet content and shared services to be controlled. This is because the security of any one user connected to the PSN affects both the

¹ <https://www.gov.uk/government/groups/public-services-network>

security of all other users and the network itself. The PSN compliance process exists to provide the PSN community with:

- confidence the services they use over the network will work without problems
- assurance that their data is protected in accordance with suppliers' commitments
- the promise that if things do go wrong they can be quickly put right.

Holding a valid PSN compliance certificate gives you our permission to interact with the PSN in a specific, pre-agreed way.

Public sector information carried across the PSN is rated at OFFICIAL under the [Government Security Classification Policy \(GSC\)](#). Our requirements are designed to defend against common threats such as opportunistic hackers and abuses of business processes, while remaining proportionate and aligned with wider business goals.”²

5. On 31 October 2015 the complainant requested information of the following description:

“I am requesting a list of Local Authorities in England, Wales and Scotland and Northern Ireland who do not have a current PSN (Public Service Network) Certificate at the current date 31 October 2015.

Each Authority is required to annually renew this certificate using the Cabinet Office supplied PSN Code of Connection document Version 1.2 issued May 2015.

A recent presentation by the LGA (Local Government Association) stated that only 75% of Authorities were certified.

Please can you provide this list ideally in electronic format.”

6. On 27 November 2015, the Cabinet Office responded. It confirmed it held relevant information but refused to provide it. It cited the following exemption as its basis for doing so:

- section 31(1)(a) – law enforcement

² <https://www.gov.uk/guidance/public-services-network-psn-compliance>

7. The complainant requested an internal review on 8 December 2015. The Cabinet Office sent him the outcome of its internal review on 10 December 2015. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 12 December 2015 to complain about the way his request for information had been handled. He disputed the balance of public interest as judged by the Cabinet Office in this case.
9. The Commissioner has considered whether the Cabinet Office is entitled to rely on section 31(1)(a) as its basis for withholding the information.

Reasons for decision

Section 31 - law enforcement

10. Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests. In this case the Cabinet Office considers that section 31(1)(a) applies. This section states:

"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,"

11. Consideration of this exemption involves two stages. First, in order to be engaged, the following criteria must be met:
 - the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

12. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

Does the harm envisaged relate to an applicable interest?

13. Covering first whether the exemption is engaged, the relevant applicable interests cited in this exemption are the prevention or detection of crime.
14. The Cabinet Office explained to the complainant that:

"The information contains details which would assist criminals to plan and execute criminal acts and to avoid detection. Disclosure would thus make the prevention of certain crimes more difficult and reduce the effectiveness of the police service in detecting the perpetrators".

15. The Commissioner is satisfied that the harm envisaged does relate to an applicable interest. In other words, the Cabinet Office is citing this exemption because of what it sees as a prejudicial outcome to law enforcement were it to disclose the information.

Is there a causal relationship between the potential disclosure and prejudice to law enforcement?

16. As shown above, the Cabinet Office has argued that those with criminal intent could use the withheld information "to plan and execute criminal acts and to avoid detection". The Commissioner, having viewed the withheld information, can see that there is a causal relationship. In other words, the criminal use that could be made of the withheld information is clear and represents a prejudicial outcome that is of substance, namely the deliberate disruption of or unauthorised access of the PSN which could constitute a criminal breach of the Computer Misuse Act.

How likely is it that the prejudicial outcome in question could arise?

17. The Cabinet Office argued the lower level of likelihood in its submissions to the Commissioner; that prejudice "would be likely to" occur rather than it "would" occur. It set out in detail for the Commissioner how PSN operated and made a link to how the prejudicial outcome envisaged would be likely to arise. To avoid disclosure of sensitive detail, the Commissioner does not propose to repeat the Cabinet Office's explanation as to how the PSN works. In summary, the Cabinet Office pointed to the exposure of any vulnerability in the network which may or may not be serious enough to put the network at risk of attack.

18. The Commissioner agrees that disclosure of the information would be likely to give rise to a prejudicial impact on the prevention or detection of crime because it is likely that it could be used by those with criminal intent to attack the PSN. The extent to which those with criminal intent would be successful is not a foregone conclusion. However, the Commissioner is satisfied that the risk of prejudice to the prevention or detection of crime arising from disclosure is sufficient to engage the exemption.
19. For the reasons outlined above, the Commissioner is therefore satisfied that the exemption at section 31(1)(a) is engaged in relation to the withheld information. However, the Cabinet Office cannot rely on the exemption unless the public interest in doing so outweighs the public interest in disclosure.

Public interest arguments

20. The complainant's argument implied that the fact that the Cabinet Office had confirmed holding information about a potential vulnerability on PSN was, of itself, prejudicial. The Commissioner has some sympathy with this view. The complainant went on to draw an analogy with an (albeit unlikely) public announcement that only 75% of cars in a given carpark were locked. He said that this would make it tempting for thieves to attempt to break in to all the cars in the car park because of the one-in-four possibility that they could succeed in doing so.
21. The complainant also went on to argue that there was a strong public interest in knowing which local councils had fallen short in their security obligations so that they could be challenged on this point and encouraged to rectify it.
22. The Cabinet Office also acknowledged that there was a public interest in increasing public knowledge about this but argued that there were stronger public interest arguments in favour of withholding the information. It pointed to the greater harm to the public interest where any specific vulnerability in the PSN is exposed to the risk of criminal activity by disclosure of the requested information.

Balance of public interest

23. The Commissioner has considered both sides of the argument. The complainant argues that the PSN is made no more vulnerable by disclosure than it already is by the acknowledgement that it holds information within the scope of the request. He argues that there is a public interest in knowing which councils are not fully compliant with their PSN obligations and such a disclosure will encourage them to rectify their security shortcomings.

24. The Cabinet Office, on the other hand, argues that the likelihood of criminal activity against the PSN would be increased by disclosure and this likelihood weighs heavily against any public interest in disclosure.
25. At closer consideration, the Commissioner can see an argument for refusing to confirm or deny whether any local authorities are non-compliant with the PSN certification requirements. The Cabinet Office did not seek to make it. The Commissioner notes the complainant's apparent experience of having this confirmed to him as set out in his request. The Commissioner also notes press reports (albeit from a slightly earlier period) which indicate that PSN compliance has not always been universal.³ The fairly widespread confirmation that there is some non-compliance may explain the Cabinet Office's decision to provide confirmation that it held information within the scope of the request. The question for the Commissioner in this case is, therefore, whether the Cabinet Office should go further than confirming that it holds information within the scope of the request: whether it should disclose that information.
26. The Commissioner recognises that there is a public interest in knowing how widespread this problem was at the time of the request. Disclosure of how many local authorities are on the list would serve this interest. Information sharing is a key part of the provision of public services but this must be carried out in a secure manner which is appropriate to the task to which the information sharing relates. Public confidence in information sharing depends on this. The Commissioner also accepts, to a lesser extent, that there is also a public interest in "naming and shaming" any local authority that is on the list through disclosure.
27. However, the Commissioner sees little public interest in making the task easier for those with criminal intent to disrupt the PSN by identifying any local authority who does not have PSN certification as at the time of the request. This would be information that was live at the time of the request (and relatively recent as at the date of this notice). Information about live non-compliance is, in the Commissioner's view, particularly sensitive because of its potential use by those with criminal intent. The Commissioner has therefore concluded that the balance of public interest favours maintaining the exemption at section 31(1)(a) with respect to naming any local authority that might be on the list.

³ <http://www.computerweekly.com/news/2240216359/Non-compliant-organisations-risk-being-cut-off-from-the-PSN>

28. The Commissioner has considered whether the public interest favours disclosing the number of local authorities on the list if not any names. The number is clearly "one or more" because the Cabinet Office confirmed that it held such information. If it denied holding any information within the scope of the request, there would be no council name on the list because no council would be non-compliant with PSN security requirements.
29. The Commissioner has concluded that the public interest in providing information about the limit or extent of any current vulnerability is not sufficiently compelling. The public interest is much stronger in avoiding disruption of the PSN by a criminal attack which would be likely to occur following disclosure of information about any live vulnerability. Given the widespread use of the PSN for the public benefit of data sharing, the Commissioner does not agree that there is a strong public interest in providing details about how to damage it. She recognises the valid concerns that the complainant has about whether there are adequate security protections on the PSN. The Commissioner accepts that this carries some weight in favour of disclosure.
30. However, 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.

Right of appeal

31. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

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