

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 July 2011

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

Summary

The complainant submitted a request to the Ministry of Justice (MoJ) for copies of the floor plans for HMP Belmarsh. The MoJ refused to provide this information arguing that it was exempt from disclosure on the basis of section 31(1)(f) which provides an exemption for information whose disclosure would, or would be likely to, prejudice the maintenance of security and good order in prisons. The Commissioner has considered the circumstances of this request and is satisfied that the exemption has been applied correctly.

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 submitted a request to the Ministry of Justice (MoJ) on 13 February 2011 seeking 'floor plans to HMP Belmarsh'.
3. The MoJ responded on 28 February 2011 and confirmed that it held the requested information but considered it to be exempt from disclosure on the basis of section 31(1)(f).
4. The complainant contacted the MoJ on 1 March 2011 and asked for an internal review of this decision. The complainant argued that as the

prison was a well secured facility he did not believe that disclosure of the requested information would compromise its safety and security.

5. The MoJ informed the complainant of the outcome of the internal review on 28 March 2011; the review upheld the application of section 31(1)(f).

The Investigation

Scope of the case

6. On 28 March 2011 the complainant contacted the Commissioner in order to complain about the MoJ's decision to withhold the information that he had requested.

Chronology

7. The Commissioner contacted the MoJ on 7 April 2011 and asked it to provide him with a copy of the withheld information and submissions to support its reliance on section 31(1)(f).
8. The MoJ responded on 11 May 2011 and provided the Commissioner with submissions to support its application of this exemption.
9. On 20 May 2011 the Commissioner contacted the MoJ again and repeated his request to be provided with a copy of the withheld information.
10. The MoJ contacted the Commissioner on 23 May 2011 and explained that if he wished to access the withheld information representatives from his office would have to travel to HMP Belmarsh. Alternatively, the MoJ offered to provide the Commissioner with a detailed description of the information itself in order to illustrate why it was of the opinion that the information was exempt from disclosure on the basis of section 31(1)(f).
11. Having considered this suggestion, the Commissioner confirmed to the MoJ that he would be content with being provided with a detailed description of the floor plans rather than actually inspecting them.
12. The MoJ provided the Commissioner with this description on 24 May 2011.

Analysis

Exemptions

Section 31 – law enforcement

13. Section 31(1)(f) provides that information is exempt if its disclosure would, or would be likely to, prejudice the maintenance of security and good order in prisons or other institutions where persons are lawfully detained.
14. In order for a prejudice based exemption, such as section 31(1)(f), to be engaged the Commissioner believes that three criteria must be met:
 - Firstly, 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;
 - Secondly, 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
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

The MoJ's position

15. In its responses to the complainant the MoJ explained that disclosure of the floor plans could undermine the range of security procedures designed to ensure that prisoners are unable to escape from custody and prevent the Prison Service fulfilling its duty to ensure that individuals in custody are held in safe and secure conditions. Disclosing floor plans detailing the location of prisoner accommodation blocks, access points and staff location points would potentially aid the possibility of an individual escaping. Furthermore the release of such information may be further exploited by members of the public to smuggle contraband items into prison presenting a further threat to safety and security.

16. As noted above the MoJ provided the Commissioner with a description of floor plans in order to support its position that the exemption at section 31(1)(f) was engaged. However, in order to ensure that the content of the floors plans is not compromised the Commissioner has not repeated this description here.

The Commissioner's position

17. The Commissioner accepts that the MoJ's argument that disclosure of withheld information could compromise the safety and security of HMP Belmarsh is clearly an applicable interest falling within the scope of section 31(1)(f).
18. With regard to the second criterion the Commissioner accepts that there is a clear causal link between prejudice to the security of HMP Belmarsh and disclosure of information which contains detailed depictions of both the interior and exterior of the prison itself. Furthermore, having considered the nature of the prejudice that could occur, the Commissioner is satisfied that this is clearly one that is real and of substance.
19. In relation to the third criterion, the Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15). With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
20. The Commissioner understands that the MoJ is relying on the lower limb of the test, i.e. that prejudice would be likely to occur. Having considered the MoJ's submissions carefully the Commissioner is satisfied that disclosure of the floor plans would indeed be likely to prejudice the maintenance of security and good order in HMP Belmarsh. The Commissioner has reached this conclusion for a number of reasons: Firstly the prejudice could occur not just by one but via two distinct methods, i.e. by prisoners trying to escape or by members of the public trying to smuggle contraband items into the prison. (In relation to the latter method the Commissioner notes the significance of the problem surrounding smuggling contraband goods into prisons as indicated by the evidence in this press article which notes that in relation to mobile phones between February 2009 and January 2010

the National Offender Management Service found 4461 mobiles and 4325 SIM cards.¹⁾ Secondly, the floor plans that are held by the MoJ are very detailed in nature and the Commissioner believes that this increases the likelihood of their disclosure undermining one or more of the various security measures that HMP Belmarsh has in place. The Commissioner disagrees with the complainant's assertion that the floor plans could be disclosed without any prejudicial effects given that the prison was a well secure facility precisely because disclosure of the floor plans would undermine security of the physical buildings at HMP Belmarsh. As noted above, the Commissioner does not feel able to provide specific examples from the floor plans to support this conclusion because this would reveal the content of the withheld information itself.

Public interest test

21. Section 31 is a qualified exemption and subject to the public test at section 2 of the Act and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption outweigh the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

22. The MoJ acknowledged that there is a public interest in disclosure of the plans because they would show the public how HMP Belmarsh is organised and therefore such information may be of interest to the public. The MoJ also noted that disclosure could improve transparency and increase public confidence in the Prison Service by revealing what physical security provisions are in place to maintain appropriate security measures within HMP Belmarsh.

Public interest arguments in favour of maintaining the exemption

23. The MoJ argued that it was simply not in the public interest for a public authority to release information which might affect or threaten the security and good order of a prison.

Balance of the public interest arguments

24. The Commissioner acknowledges that the public have a genuine interest in understanding how a prison operates so that they can be

¹ <http://www.dailymail.co.uk/home/moslive/article-1273197/How-smuggled-mobile-phones-used-prisoners-commit-crimes-cells.html>

reassured that the welfare of prisoners is given due regard by the Prison Service but also because how a prison regime treats prisoners is arguably likely to have an effect on how prisoners behave once they are released. Disclosure of the withheld information could, to some limited degree, inform the public as to the conditions in which prisoners in HMP Belmarsh are held. Furthermore, the Commissioner also believes that the argument that disclosure could improve the public's confidence in the physical security of HMP Belmarsh is one that should be attributed some weight.

25. However, the Commissioner believes it is very clearly in the public interest that the security and good order of HMP Belmarsh is not undermined both in order to protect the welfare of prisoners and staff and moreover the safety of the wider public. Therefore the Commissioner is firmly of the opinion that the public interest in maintaining the exemption outweighs the public interest in disclosure of the requested information.

The Decision

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

Steps Required

27. The Commissioner requires no steps to be taken.

Right of Appeal

28. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

29. 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.

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

Dated the 26th day of July 2011

Signed

**Lisa Adshead
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Law enforcement

Section 31(1) provides that –

“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,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”