

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2016

Public Authority: Security Industry Authority
Address: PO Box 49768
London
WC1V 6WY

Decision (including any steps ordered)

1. The complainant requested information relating to a named nightclub and the conduct of its security staff. The Security Industry Authority (SIA) refused to confirm or deny holding the requested information citing sections 40(5) (personal information), 30(3) (investigations and proceedings) and 31(3) (law enforcement) of the FOIA.
2. The Commissioner investigated whether the SIA was entitled to apply section 30(3) of the FOIA.
3. The Commissioner's decision is that section 30(3) of the FOIA is engaged and that the balance of the public interest favours maintaining the exemption. She therefore decided that the SIA was entitled to rely on section 30(3) to refuse to confirm or deny whether it held any relevant information. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. The SIA is the organisation responsible for regulating the private security industry. It is an independent body reporting to the Home Secretary, under the terms of the Private Security Industry Act 2001.

Request and response

5. On 15 July 2016, the complainant wrote to the SIA and requested information in the following terms:

"We write to request records of any complaints (whether substantiated or not) made in respect of 3 night club doormen based at the [name redacted] nightclub in Cambridge. We believe that the doormen in question were contracted to work by an external agency. There [sic] names and license numbers are as follows:

[names and licence numbers redacted]

We would also like any information in respect of complaints made about the conduct [of] security staff at the establishment more generally".

6. The SIA responded on 5 August 2016. It refused to provide the requested information. It cited the following FOIA exemptions as its basis for doing so:
 - section 40(2) (personal information)
 - section 30 (investigations and proceedings)
 - section 31 (law enforcement).
7. In her request for an internal review, the complainant asked for a more detailed account of how the release of the non-particularised information regarding the nightclub in question could prejudice the SIA's ability to conduct investigations and exercise its regulatory functions.
8. Following an internal review the SIA wrote to the complainant on 24 August 2016. It revised its position, refusing to confirm or deny whether it held the requested information. It cited the following exemptions as its basis for doing so:
 - section 40(5) (personal information)
 - section 30(3) (investigations and proceedings)
 - section 31(3) (law enforcement).

Scope of the case

9. The complainant contacted the Commissioner on 5 September 2016 to complain about the way her request for information had been handled.
10. She confirmed that her complaint was limited to the second part of her request, namely the part of the request relating to information in respect of complaints made about the conduct of security staff in general at the named establishment.

11. The complainant told the Commissioner:

"... It must surely be taken as a given that the SIA holds information as to the mere fact of whether or not intelligence has been received regarding a specific private security business that comes under its remit,..."

12. The complainant accepted that the SIA had the ability to conduct investigations and exercise its regulatory functions. However she told the Commissioner:

"... we are wholly unsatisfied that simply confirming or denying the existence of the information requested could possibly prejudice these abilities"

13. In correspondence with the complainant, the SIA confirmed that it was satisfied:

"... that any intelligence held regarding a particular licenced venue and its security provision is exempt from disclosure under FOIA"

14. During the course of the Commissioner's investigation the SIA confirmed its application of both sections 30(3) and 31(3) of the FOIA to the requested information.

15. The analysis below considers the SIA's application of section 30(3) of the FOIA to the requested information.

Reasons for decision

Section 30 investigations and proceedings

16. Section 30(3) of the FOIA states:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held would be) exempt information by virtue of subsection (1) or (2)"

17. Section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings. Section 30(2) protects the identity of confidential sources, primarily to ensure informants are not deterred from supplying law enforcement agencies with valuable intelligence.

18. Section 30 is a class based exemption. Information simply has to fit the description contained in section 30 to be exempt. There is no need for the information to prejudice, for example, any investigation or set of

proceedings that it may have been obtained for. However, the exemption is subject to the public interest test.

19. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2).
20. Consideration of section 30(3) of the FOIA is a two-stage process. First, the exemption must be engaged. Secondly, this exemption is qualified by the public interest, which means that the confirmation or denial must be made if the public interest in maintaining the exemption does not outweigh the public interest in disclosure.
21. In this case, the SIA relied on section 30(3) on the basis that any relevant information, if held, would be exempt by virtue of section 30(1)(b).

Is the exemption engaged?

22. The first step is to address whether, if the SIA held information falling within the scope of the complainant's request, this would fall within the class specified in section 30(1) of the FOIA.
23. In correspondence with the complainant, the SIA told her:

"Section 30(1)(b) FOIA provides an exemption from disclosure for information which has at any time been held by SIA for the purpose of investigations which may lead the SIA to instigate criminal proceedings which it has the power to conduct".

24. In correspondence with the complainant, the SIA explained that it does not have a formal complaints scheme in relation to the conduct of businesses or individuals operating in the private security industry. Nor does it run a complaints scheme in relation to licensed venues and the conduct of staff operating within their premises. It told her:

"Consequently, any information received from partner agencies or members of the public is treated as intelligence and used accordingly i.e. to inform the consideration of regulatory action or criminal prosecution.

It is clear that the information you have requested, if held by SIA, would be exempt from disclosure by virtue of section 30(1)(b) and 31(1)(g) and that sections 30(3) and 31(3) apply".

25. The concern of the SIA was that that confirmation or denial in this case could alert individuals or businesses to the fact that it or its partners have an interest in their conduct.

26. The complainant expressed surprise that the SIA was concerned about the release of the requested information having the potential to alert others about its activities. She told the Commissioner:

"Private security businesses regulated by the SIA know very well that the SIA has interest in their conduct, as this is part of their stated regulatory remit".

27. Furthermore, the complainant did not consider that the SIA had identified how disclosure – by way of confirmation or denial – would result in prejudice in this case.

28. She told the Commissioner:

"..... the information requested is of such a general nature that its disclosure can not conceivably provide the [name redacted] nightclub with an opportunity to take action that might jeopardise an investigation".

29. The wording of the request in this case specifies that the request is for information about any complaints made about the conduct of the security staff at a named nightclub.

30. In correspondence with the Commissioner, the SIA confirmed that it has powers of prosecution under the terms of the Private Security Industry Act 2001. The Commissioner is satisfied that the SIA has the power to institute and conduct any criminal proceedings that result from its investigations, as described in section 30(1)(b).

31. In order for section 30(1)(b) to be engaged, the investigation must be one *"which in the circumstances may lead to the decision to institute criminal proceedings"*.

32. The Commissioner is satisfied that any information that may be held by the SIA that fell within the scope of the request would have been held for the purposes of an investigation which may lead to a decision by the SIA to institute criminal proceedings and so would be within the class described in section 30(1)(b). The exemption provided by section 30(3) of the FOIA was, therefore, engaged.

The public interest test

33. The Commissioner has issued guidance on section 30¹ which states:

¹ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

"Where section 30(3) applies it is subject to the public interest test. Although the exemption may be automatically engaged where the information would be exempt under either subsection (1) or (2), it could only be maintained in the public interest if confirmation or denial would interfere with the effective conduct of the investigations or proceedings. If no harm would arise the public authority should not attempt to apply section 30(3)".

Public interest arguments in favour of maintaining the duty to confirm or deny whether the requested information is held

34. Arguing in favour of disclosure by way of confirmation or denial, the complainant told the SIA:

"There is a very strong public interest in ensuring that those who have been convicted of a criminal offence are able to present all relevant information in court".

35. Without this, she argued, it is difficult for the public to have confidence that mistakes made by the justice system will be corrected.
36. The complainant accepted that the SIA may well be concerned about the disclosure of information which revealed the specific nature of any intelligence received, or which identified the source of the intelligence. She accepted that disclosure of such information *"could very clearly compromise an investigation"*. Accordingly, she accepted that it would not be in the public interest if the SIA's ability to conduct investigations was prejudiced.
37. However, she told the SIA that she considered that disclosure of information not relating to the particulars of any complaints intelligence - for example, whether a complaint has been made, the number of complaints made, the year the complaints were made - was justified.
38. The SIA acknowledged that there is a public interest in the public being made aware of whether and what action is taken by the SIA in relation to specific pieces of intelligence because it allows for public scrutiny of its effectiveness as a regulator and contributes to public confidence regarding standards within the security industry.
39. In that respect, it explained to the Commissioner that the SIA website publishes a list of its successful prosecutions from the preceding 12 months.
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40. In its correspondence with the Commissioner the SIA recognised the potential public interest in disclosure of intelligence which may serve to overturn alleged miscarriages of justice.

Public interest arguments in favour of maintaining a 'neither confirm nor deny' response

41. With respect to the complainant's view that information regarding complaints could be non-particularised for release, the SIA told her:

"Disclosure of even non-particularised detail regarding intelligence received from partner agencies or members of the public has the potential to alert individuals or businesses to the fact that the SIA or its partners have an interest in their conduct; potentially compromising ongoing or future criminal or regulatory investigations. Further, if investigations were to be compromised, the SIA would risk deterring individuals and businesses from disclosing valuable information to the SIA in the future which would otherwise have assisted us in performing our public protection duties".

42. In its submission to the Commissioner the SIA also explained that it has a close working relationship with various enforcement authorities. It described the "*extensive sharing of intelligence*" between the various enforcement and security authorities. It explained that, in the event that the SIA was required to disclose the requested information, or to confirm or deny its existence, there could be a significant risk of a reduction in that intelligence sharing which would be to the detriment of the SIA's functions.
43. It also argued that it is in the public interest for the SIA to have a safe space in which to explore fully all aspects of any case it may be investigating concerning the nightclub specified in the request.

Balance of the public interest

44. The purpose of section 30 is to preserve the ability of relevant public authorities to carry out effective investigations. Key to the balance of the public interest in a case such as this, where the exemption is found to be engaged, is whether confirmation or denial could have a harmful impact on the ability of the SIA to carry out effective investigations. Clearly it would not be in the public interest to jeopardise the ability of the SIA to investigate effectively situations which may lead to criminal proceedings being instigated.
45. The Commissioner considers the wording of the request for information will affect whether or not a public authority will confirm or deny it holds that information. The Commissioner also considers that, in many cases, the more specific the request, the lower the likelihood of the duty

arising. In this case, the request is focussed on complaints about a specific nightclub, rather than complaints about licenced premises in general.

46. The complainant made submissions in relation to her interest in this information being disclosed. However, while the Commissioner recognised the complainant's personal reasons for wanting access to the information, the Commissioner must consider the wider public interest issues.
47. The Commissioner considers that there is clearly a public interest in the transparency and accountability of public authorities. She recognises that confirming or denying whether the requested information is held would meet the public interest in transparency and accountability of the SIA.
48. The Commissioner acknowledges that the public must be satisfied that the SIA takes seriously information it receives from members of the public that may point to the existence of activity in breach of the legislation governing the private security industry. Sufficient information should therefore be made available to give the public reassurance that its work in this respect is done effectively and promptly.
49. She also recognises as significant the perception that confirmation or denial could create about how likely it is that cooperation with the SIA will remain confidential. Clearly it is vital that the SIA are able to give a guarantee of confidentiality to anyone who may be willing to cooperate with them. If they were unable to give such a guarantee, this would be likely to disrupt the flow of information to them, with consequent serious harm to investigations and intelligence sharing between enforcement agencies.
50. The Commissioner gives weight to the argument that confirmation or denial could result in disruption to the flow of information to the SIA and that this, in turn, would undermine its ability to conduct its investigations and perform its functions. She also accepts that confirmation or denial in this case could serve to tip off the nightclub concerned regarding whether or not intelligence is held.
51. This goes to the heart of what the section 30 exemption is designed to protect - the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings - and so the public interest in maintaining the exemption must be very strong in such a case.
52. Having considered all the circumstances, the Commissioner has concluded that the public interest in maintaining the section 30(3) FOIA exemption outweighs the public interest in confirmation or denial. The

SIA was not, therefore, obliged to confirm or deny whether it held this information.

53. In reaching this decision, she has given particular weight to the arguments surrounding the public interest in protecting the ability of the SIA to conduct its investigations and perform its functions. In particular she accepted that any information that may be held would relate to the named nightclub, and the potential prejudice to any ongoing or future investigation into the nightclub in question.

Other exemptions

54. As the Commissioner is satisfied that the SIA was entitled to rely on section 30(3) she has not considered its application of section 31(3).

Right of appeal

55. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.

57. 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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