Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 March 2019

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for a copy of its Information Asset Register and a list of cost codes issued by the department. The Cabinet Office disclosed the list of cost codes but sought to withhold the Information Asset Register on the basis of section 31(1)(a) (law enforcement) of FOIA. The Commissioner has concluded that the Information Asset Register is not exempt from disclosure on the basis of section 31(1)(a) of FOIA.

2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

    - Provide the complainant with a copy of the Information Asset Register.

3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. The complainant submitted the following request to the Cabinet Office on 3 July 2018:

'1) For a copy of your latest Information Asset Register; and

2) A list of all Cost Codes used by the department.'

5. The Cabinet Office responded on 9 August 2018 and provided the complainant with a copy of the cost codes that it used. However, it explained that although it held a copy of its Information Asset Register (IAR) it considered this to be exempt from disclosure on the basis of section 31(3) of FOIA.

6. The complainant contacted the Cabinet Office on 18 August 2018 and asked it to conduct an internal review of this response.

7. The Cabinet Office informed him of the outcome of the internal review on 31 August 2018. The review upheld the application of section 31(3).

Scope of the case

8. The complainant contacted the Commissioner on 5 September 2019 in order to complain about the Cabinet Office's decision to withhold its IAR.

9. During the course of the Commissioner's investigation, the Cabinet Office explained that it was in fact relying on section 31(1)(a) (the prevention or detection of crime) in order to withhold the IAR rather than section 31(3) of FOIA.

Reasons for decision

Section 31 – law enforcement

10. Section 31(1)(a) of FOIA states 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,'

The Cabinet Office's position

11. The Cabinet Office explained that it was relying on the lower threshold of prejudice, ie that disclosure would be likely to prejudice the prevention or detection of crime. It set out two reasons for this position. Firstly, the Cabinet Office argued that disclosure would be likely to encourage those with malicious intent to target the system containing

the withheld information. Secondly, the Cabinet Office explained that if someone already has a hostile interest in the activities of the department then disclosure of the IAR list will add to their information and help them to 'better' target the Cabinet Office's systems because they will have a better idea what to look for. As a result disclosure of the IAR would, therefore, be likely to prejudice the prevention of potential criminal acts.

12. In support of this position the Cabinet Office explained that although the information on the IAR may appear innocuous in itself, it provides details which would be likely to assist anyone with malicious intent in harmful cyber activity, that is, hacking into the department's IT systems. The Cabinet Office emphasised that it has a very high profile and handles a wide range of highly topical and/or very security-sensitive matters. It explained that whilst it securely protected all of its information it should be stressed that for some datasets it gave additional and specific handling commitments to information providers (eg it would safeguard anonymity regarding information provided to support nominations for ceremonial honours and awards, and an individual's 'suitability' for receiving one; details of external visitors to its buildings estate etc). The Cabinet Office explained that much of the information it holds is highly security (and personal) classified. It argued that not only could disclosure led to a security loss it would be highly embarrassing to the department and jeopardise its data sharing arrangements with other parties.

13. The Cabinet Office also provided the Commissioner with additional submissions to support its reliance on section 31(1)(a) which it considered to be sensitive and therefore should not be included in the decision notice. Given the content of these submissions, the Commissioner considers this to be a reasonable request.

14. With regard to the complainant's suggestion that the IAR could be disclosed with any genuinely sensitive information redacted, the Cabinet Office argued that this was not a feasible option for two reasons. Firstly, that it did not know why the complainant had asked for access to its IAR and secondly, once the information is in the public domain it lost all control over it and it can be used by anyone for whatever reason they so wish, including those with malicious intent. The Cabinet Office emphasised that the titles of its datasets make redaction very difficult and if it were to remove references to sensitive information assets very little information would remain. The Cabinet Office's view was that even publishing a redacted version would encourage hackers to try to access its systems to see what it was are 'hiding'.

The complainant's position

15. The complainant argued that the IAR was not exempt from disclosure on the basis of section 31 as there is no clear way that the release of it could allow persons to compromise the security of data held by Cabinet Office. The complainant suggested that the IAR would provide a list of databases held, and a description of what information is held within these databases. However, the complainant argued that it would not provide technical information that could aid an attempt to compromise this data, as the Cabinet Office suggested, and in the very small number of possible occasions where it might, this technical information could be redacted with the rest released, and not exempted in a blanket manner. The complainant also noted that other central government departments had disclosed their IARs under FOIA.[1]

The Commissioner's position

16. In order for a prejudice based exemption, such as section 31(1), to be engaged the Commissioner considers 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 – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in

[1] DEFRA's IAR is available here https://www.gov.uk/government/publications/defra-information-asset-register; The Scotland Office's IAR is available here https://www.gov.uk/government/publications/office-of-the-secretary-of-state-for-scotland-information-asset-register; The complainant has also complained to the Commissioner about the DCMS' decision to withhold its IAR, but following this complaint the DCMS disclosed a redacted version of its IAR listing the date of an asset's creation, its title, description/purpose and department/team who owned the asset.

the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

17. With regard to the first criterion, the Commissioner accepts that the potential prejudice described by the Cabinet Office clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.

18. With regard to the second criterion, the Commissioner accepts that the threat from cyber-attacks that the Cabinet Office faces are clearly real ones. She also accepts that any additional information about the Cabinet Office's IT systems could *in theory*, be useful to those with a malicious intent to allow them to better target any attack on those systems. As a result the Commissioner accepts that it plausible to argue that there is a causal link between disclosure of the information and prejudice occurring. Consequently, the Commissioner accepts that any such resultant prejudice if the IAR were to be disclosed is real, actual and of substance.

19. However, the Commissioner is not persuaded that the chance of such prejudice occurring is one that is more than a hypothetical possibility. She has reached this conclusion because she has reservations about the extent to which the withheld information could actually assist those intent on attacking the Cabinet Office's IT systems given that not only is the information relatively innocuous but it seems reasonable to presume that the Cabinet Office would hold at least some of the assets listed on the IAR. Furthermore, the Commissioner's reservations also stem from the fact that a number of other government departments have disclosed versions of their IARs. Whilst some of these IARs have been disclosed in redacted form, the level of detail contained in the information that has been disclosed is very similar to the level of detail contained in Cabinet Office's IAR which it is of course seeking to withhold. The Commissioner is well aware that each request must be considered on its own merits and that there may well be reasons why one public authority would disclose information under FOIA when another public authority may have legitimate grounds upon which to withhold similar information. However, in the circumstances of this case in the Commissioner's view the disclosure by other government departments of their versions of the IAR casts further doubt on the likelihood of prejudice occurring should the Cabinet Office disclose its IAR. The Commissioner has elaborated briefly on these findings in a confidential annex, a copy of which will be provided to the Cabinet Office only.

20. The IAR is therefore not exempt from disclosure on the basis of section 31(1)(a) of FOIA and needs to be disclosed by the Cabinet Office.

Right of appeal

21. 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

22. 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.

23. 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 .....

Jonathan Slee
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