

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2024

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DP

Decision (including any steps ordered)

1. The complainant has requested information about the failure of electronic passport gates ('eGates') at UK airports in May 2023. The Home Office refused the request, citing section 31(1)(e) (Law enforcement) of FOIA.
2. The Commissioner's decision is that section 31(1)(e) was applied correctly to withhold the information.
3. The Commissioner does not require further steps as a result of this decision.

Background

4. eGates are automated self-service barriers, located at immigration checkpoints in some airports across the UK. They are operated by UK Border Force, which is a law enforcement command within the Home Office.
5. In May 2023, it was widely reported that eGates in several UK airports had experienced outages, resulting in large passenger queues¹.

¹ <https://www.bbc.co.uk/news/uk-65731795>

Request and response

6. On 9 October 2023, the complainant wrote to the Home Office and requested information in the following terms:

“Under the Freedom of Information Act 2000 I wish to see full copies of any internal/administrative reviews and lessons learned reports into the failure of electronic passport gates (eGates) in May 2023.”
7. The Home Office responded on 23 October 2023. It refused to disclose the requested information, citing section 31(1)(e) of FOIA, which is concerned with the operation of the immigration controls. It said it was not government practice, for reasons of law enforcement, to comment on operational issues relating to eGates’ security and performance.
8. Following an internal review, the Home Office wrote to the complainant on 1 December 2023. It confirmed the existence of a “post-incident review document” and maintained its application of section 31(1)(e) to refuse to disclose it.

Scope of the case

9. The complainant contacted the Commissioner on 14 December 2023 to complain about the way his request for information had been handled. He felt that it should be possible for the Home Office to disclose some of the requested information.
10. The analysis below considers the Home Office’s application of section 31(1)(e) of FOIA to refuse the request.

Reasons for decision

11. Section 31(1)(e) of FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice the operation of the immigration controls (that is, physical immigration controls at points of entry into the UK).
12. The exemption is subject to a public interest test. This means that the information must be disclosed if the public interest in disclosing the information is equal to, or greater than, the public interest in protecting the matters covered by section 31(1)(e).
13. The Home Office explained to the complainant that the withheld information would reveal information about operational capabilities and that a fuller picture of law enforcement practices could be built up by

combining the withheld information with information which is already in the public domain. It said this information would be of value to anyone seeking to circumvent border controls.

14. It said that it was unable to agree to the complainant's request to disclose a redacted version, as "the exempt information is scattered throughout and what remains would make little sense".
15. The Commissioner is satisfied that the harm the Home Office envisages relates to the law enforcement interests protected by section 31(1)(e) – the operation of the immigration controls.
16. He is also satisfied that the envisaged harm - the circumvention of immigration controls - is not trivial. Clearly, circumventing immigration controls is an extremely serious matter, undermining the integrity of the UK's border security. Even unsuccessful attempts to circumvent immigration controls put a strain on resources and they can also cause public disquiet.
17. Furthermore, the Commissioner is satisfied that there is a clear causal link between disclosure and the envisaged harm. The Home Office's internal review explained:

"The Home Office does not disclose information relating to e-Passport gates, or any information relating directly or indirectly to the resources devoted to the operation of immigration controls.

Disclosure of information about the operation of e-Passport gates, in this particular case a post-incident review document concerning the incident in May of this year, would provide an insight into the effectiveness of mainstream border controls. This information could then be pieced together with other information available by organised crime groups and determined individuals to circumvent UK Border controls generally. This in turn would allow the effectiveness of immigration controls to be assessed and make it easier for them to be circumvented. The duty of Government to protect border controls is of paramount importance."

18. The Home Office said that disclosure "would" prejudice the operation of the immigration controls. The term "would prejudice" means that it must be more probable than not that the harm would occur.
19. Information about the reasons for the eGates outage and the learning points arising from it, would undoubtedly be of value to someone wanting to build a picture of border control operations, to identify strengths and to understand and exploit specific weaknesses.
20. The Commissioner has previously been presented with credible evidence that organised crime gangs will go to considerable lengths to bring

people into the UK illegally and that they collate and study varied sources of information which help them to do this². As such, knowledge of why the eGates failed and what was being done in response, would undoubtedly be of assistance to their understanding of the UK's border security capabilities and it would be likely to inform their planning.

21. While the Commissioner does not suggest that this is the complainant's purpose in requesting the information, he must bear in mind that disclosure under FOIA is to be considered as being to the world at large.
22. Mindful that the information requested is specifically on "reviews and lessons learned" regarding the eGate outage, the Commissioner is satisfied that its disclosure would prejudice the operation of border controls and therefore that the exemption at section 31(1)(e) provides grounds for withholding it in its entirety.

Public interest test

23. The Home Office acknowledged factors in favour of disclosure, such as transparency, accountability and public confidence in the eGates system.
24. However against disclosure, the Home Office argued that the request concerns operationally sensitive information relating to immigration controls, and it emphasised the vital importance of protecting the UK's borders.
25. The Home Office concluded that the public interest favours withholding the information.
26. In his complaint to the Commissioner, the complainant said there was a public interest in disclosing information about why the eGates failed, due to the level of passenger disruption the incident in question had caused.
27. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight in the public interest test. He also recognises that the failure of the eGates was a major incident. Disclosure would inform the public about a leading piece of public sector security technology, the outage of which had affected a lot of people.
28. On that point, the Commissioner notes that there is general information in the public domain regarding the operation of eGates, published by the Independent Chief Inspector of Borders and Immigration. It gives an

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025721/ic-230053-k1d3.pdf>

overview of eGates operation³ and it goes some way to satisfying the public interest in informing the public about the eGates system.

29. However, when considering whether it better serves the public to disclose or withhold the information, the Commissioner recognises the strong public interest in protecting the ability of the UK to protect its borders. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – in this case, it would not be in the public interest to prejudice the capabilities of Border Force by disclosing operational information and in so doing, placing the UK at increased risk of harm and further disruption.
30. Taking all the above into account, the Commissioner has concluded that to justify disclosure in this case, the prejudice to the processes described in sections 31(1)(e) would need to be outweighed by sufficiently weighty public interest arguments. The Commissioner does not consider that the public interest arguments in favour of disclosure are sufficiently weighty. His decision is therefore that the public interest in the maintenance of the exemption at section 31(1)(e) outweighs the public interest in disclosure. The Home Office was entitled to rely on section 31(1)(e) to refuse to disclose the withheld information.

³https://assets.publishing.service.gov.uk/media/65e075ed2f2b3b001c7cd769/A_re-inspection_of_ePassport_gates_May_2023.pdf

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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.

Samantha Bracegirdle
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