

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 September 2024

Public Authority: Department of Finance for Northern Ireland
Address: Clare House
303 Airport Road
Belfast
BT3 9ED

Decision (including any steps ordered)

1. The complainant requested information relating to staffing levels within Magilligan Prison. The Department of Finance withheld the requested information in reliance on section 31(1)(f) of FOIA (maintenance of security and good order in prisons).
2. The Commissioner's decision is that the Department was entitled to rely on section 31(1)(f) to refuse the request. No steps are required.

Request and response

3. On 9 January 2024 the complainant requested the following information from the Department:

“The current number of Senior Officers in HMP Magilligan?
(breakdown of Substantive and temporary)

The TSL [target staffing level] for Senior Officers in HMP Magilligan?
What vacancies the 3 temporary promoted Senior Officers are covering?”
4. The Department refused the request on 1 February 2024 citing section 31(1)(f) of FOIA (maintenance of security and good order in prisons).
5. It upheld the refusal on 15 February 2024 following an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 22 February 2024 to complain about the way their request for information had been handled. The complainant disagreed with the Department's application of the exemption and argued that the requested information ought to have been disclosed.

Reasons for decision

Section 31(1)(f): prejudice to the maintenance of security and good order in prisons

7. Section 31(1)(f) of FOIA provides an exemption from the right to know where disclosure of the relevant information would, or would be likely to, prejudice the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.
8. The Commissioner's guidance on section 31¹ states the following regarding section 31(1)(f):

"The term "security and good order" will include, but is not limited to, both external and internal security arrangements. It will also protect any information likely to prejudice the orderly running of these institutions from disclosure. Conceivably this could include information that has the potential to inflame an already volatile atmosphere amongst the prison population."
9. Section 31(1)(f) is a prejudice-based exemption. In order to engage it, the potential prejudice envisaged must relate to the maintenance of security and good order in prisons. There must also be a causal relationship between disclosure and the potential prejudice described. Furthermore, the potential prejudice that is envisaged must be real, actual or of substance.
10. Consideration of the exemption at section 31 is a two-stage process. Even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

¹ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

11. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activity mentioned in section 31(1)(f) – ie the maintenance of security and good order in prisons.
12. The Department argued that the withheld information comprises detailed information about prison staffing levels, which is critical to the safe and secure running of the prison.
13. The Commissioner is satisfied that the prejudice the Department has described is relevant to the particular interest that section 31(1)(f) is designed to protect.
14. The Commissioner has next considered whether the Department has demonstrated a causal relationship between disclosure of the withheld information and the prejudice that section 31(1)(f) is designed to protect against. In his view, disclosure must at least be capable of harming the interest in some way, ie it must have a damaging or detrimental effect on it.
15. The Department set out that disclosure of the withheld information would provide prisoners and criminal gangs with insight into the operational strengths and capabilities within the prison establishments. It argued that the information relating to vacancies would inform those wishing to participate in criminal activity or disorder. It further argued that the information on temporary promotions could highlight potentially vulnerable areas where less experienced staff were in charge.
16. The Commissioner accepts that there is a causal link between disclosure of detailed staffing information, and prejudice to the security of prisons as set out above.
17. In terms of likelihood the Department applied the lower threshold, that disclosure “would be likely to” cause prejudice. The Commissioner’s guidance on the prejudice test² states that “would be likely to prejudice”:

“...means that there must be more than a hypothetical or remote possibility of prejudice occurring; there must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%”.

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/the-prejudice-test/>

18. Having viewed the withheld information, the Commissioner considers it realistic that it could be used by interested parties in the way described by the Department. He accepts that this would be likely to prejudice the maintenance of security and good order in prisons.
19. The Department also asked the Commissioner to take account of the 'mosaic effect'. It argued that disclosure of the requested information in this case would make it more difficult to refuse requests for similar information in the future, for example staffing levels at other grades within a particular prison. The Department maintained that prisoners and criminal gangs would be encouraged to make requests for such information in order to build up a detailed picture of different areas within each prison.
20. The Commissioner concludes that the likely prejudice alleged by the Department is real and of substance, and that there is a causal relationship between the disclosure of the withheld information and the prejudice which the exemption is designed to protect against. Consequently he finds that the exemption at section 31(1)(f) is engaged on the basis that disclosure would be likely, though not necessarily more likely than not, to cause the prejudice claimed.
21. Section 31(1)(f) provides a qualified exemption. The fact that prejudice has been identified and accepted is not in itself conclusive evidence that information should be withheld. Rather, the public authority must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest in favour of disclosure

22. The Department acknowledged the public interest in disclosing information that would increase the transparency of its work within prisons and in particular regarding staffing levels within prisons in Northern Ireland.
23. The complainant also identified arguments in favour of disclosure. They maintained that similar information had been made available to the Prison Service Pay Review Body (the PSPRB). They complained that the Department had originally advised that it would disclose the information to them through the normal course of business, then changed its mind. The complainant did not accept the Department's position that information could only be disclosed under FOIA if it could be disclosed to the public at large. The complainant suggested that if they requested their own personal information, it would be disclosed to them and not the public at large.

24. The complainant also pointed out that the Department had been unclear as to who “owned” the requested information. The complainant considered that if the information was as sensitive as claimed, it would be more strictly controlled and there would be no such doubt.

Public interest in favour of maintaining the exemption

25. The Department largely referred to the arguments it had made in respect of engaging the exemption. It considered there to be an overwhelming public interest in the maintenance of security and good order in prisons, both for the security and wellbeing of staff and prisoners.
26. In response to the complainant’s claim that similar information was already available to the public, the Department clarified that high-level information was published but not at the level of detail requested by the complainant.

Balance of the public interest

27. The Commissioner is mindful that the exemption at section 31(1)(f) of FOIA is engaged on the basis that the Commissioner is satisfied that the identified prejudice would be likely to occur if the information were to be disclosed into the public domain. The Commissioner must accord appropriate weight to such prejudice when considering the balance of the public interest.
28. The Commissioner considers that there is a legitimate public interest in the public being informed about staffing levels within prisons. The public rightly expect that prisons will be adequately and efficiently staffed in order to fulfil a key part of the justice system and protect the public.
29. The Commissioner has also carefully considered the extent to which disclosure of the withheld information in this case would serve the public interest. He accepts that it would more fully inform the public about staffing levels within the prison in question. However the Commissioner is not persuaded that the specific withheld information in this case would necessarily inform the public as to how adequate or effective staffing levels are since it would only provide information that was accurate at the time of the response. Moreover, it would equally inform those wishing to circumvent security measures and possibly endanger prison staff.
30. The Commissioner notes the complainant’s argument that similar information has been put into the public domain already, and that the specific requested information ought to be disclosed. However the Commissioner observes that the PSPRB, referred to in the request, has not published information in a comparably detailed manner.

31. The Commissioner has seen no evidence to suggest that the information made available to the PSPRB referred to by the complainant is available to the general public. The Commissioner is not persuaded that information made available to the PSPRB as part of pay discussions should in itself mean that the Department is required to disclose that information into the public domain.
32. Similarly, the Commissioner would respectfully clarify that, contrary to the complainant's argument at paragraph 23 above, public authorities are only required to disclose information under FOIA if it could be disclosed to any member of the public who requested it. The complainant is correct that they may be entitled to receive their own personal information if requested, but such a disclosure would not be required under FOIA. Indeed, FOIA provides that an individual's personal data is exempt from disclosure under section 40 precisely because FOIA only provides for information to be disclosed into the public domain. The Commissioner cannot require the Department to disclose the requested information in this case solely to the complainant.
33. The Commissioner is reminded that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to the maintenance of security and good order in prisons. It is very clearly in the public interest that the security and good order of prisons is not undermined; maintaining effective control of prisons is key to protecting the safety of all those who live and work within them, and also the safety of the wider public.
34. The Commissioner considers that there is a very substantial public interest in avoiding that outcome and that this is a public interest factor of considerable weight in favour of maintenance of the exemption. The Commissioner is not persuaded that there is an equally weighty public interest in disclosing the requested information into the public domain in this particular case. Therefore, in all the circumstances of the case he finds that the public interest in maintaining the exemption at section 31(1)(f) clearly outweighs the public interest in disclosure.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Sarah O’Cathain
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Information Commissioner’s Office
Wycliffe House
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