

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 December 2024

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information in respect of immigration control areas at Gatwick and Manchester Airports. The Home Office refused to disclose the requested information, citing section 31(1)(e) (Law enforcement – operation of immigration controls).
2. The Commissioner's decision is that the Home Office was not entitled to apply section 31(1)(e) to refuse to disclose the requested information.
3. In failing to disclose all non-exempt information within the statutory timeframe, the Home Office has breached section 10 (timescale for compliance) of FOIA.
4. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information to the complainant.
5. The Home Office must take these steps within 30 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.

#### **Background**

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6. The Immigration Act 1971, Schedule 2, paragraph 26(3) states that:

"The Secretary of State may also from time to time give to any persons concerned with the management of a port in the United Kingdom written notice designating control areas in the port and specifying conditions or restrictions to be observed in any control area; and any such person shall take all reasonable steps to secure that any conditions or restrictions as notified to him are observed."

7. Written notices have been issued to ports and airports by the Secretary of State under this provision over a period of time.

### **Request and response**

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8. On 31 January 2024, the complainant wrote to Home Office and requested information in the following terms:

"I am writing to request the following information relating to written notices:

A copy of any Written Notice - Designating the Immigration Control Area Specifying Conditions and Restrictions to be Observed in a Control Area – Immigration Act 1971 Schedule 2 Paragraph 26(3)), made to UK airports relating to the use of facial recognition technology to identify passengers boarding domestic and common travel area flights, which imposes any duty or obligation on passengers, could result in any penalty (legal, civil or administrative) for a passenger, or impacts their rights under the Data Protection Act 2018 and UK GDPR.

I would like all document sent electronically please. Under Section 16 of the Act I also ask that if this request cannot be fulfilled under the legislation, that you offer advice and assistance to help the request comply with the act. I look forward to your response within 20 working days."

8. Home Office requested clarification of the request as follows;

"Please could you confirm if there is a specific Written Notice you are requesting a copy of and if this request relates to all airports or a specific airport?"

9. On 22 February 2024, the complainant advised:

"I also do not see how this request for clarification is necessary, as my request stated I am seeking a copy of any written notice made in relation to facial recognition, if it were for a specific written order (which would be difficult given the fact that these are not easily accessible to the public) I would have said so. Likewise I would have

stated a specific airport if I sought to limit my request to a specific airport, rather than stating "UK airports" in the plural.

However to speed up the processing of this request, I am content to limit this to Gatwick and Manchester Airports for now. I look forward to the Home Office's response within the timelines set out in law."

10. The Home Office responded on 22 April 2024. It refused to disclose the requested information, citing section 31(1)(e) (Law enforcement – operation of immigration controls) of FOIA.
11. Following an internal review, the Home Office wrote to the complainant on 27 June 2024 upholding its position in respect of section 31(1)(e).

### **Scope of the case**

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12. The complainant contacted the Commissioner on 10 July 2024 to complain about the way their request for information had been handled.
13. The Commissioner considers that the scope of his investigation is to analyse the application of section 31(1)(e) by the Home Office to refuse the request.
14. The Commissioner has viewed the withheld information which consists of two written notices issued under the Immigration Act 1971 Schedule 2 paragraph 26(3) to Gatwick and Manchester Airports respectively.

### **Reasons for decision**

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#### **Section 31(1)(e) – Law enforcement – immigration controls**

15. 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).
16. In order for the exemption to apply, three criteria must be met:
  - the actual harm which the Home Office envisages must relate to the applicable interests within the exemption it has cited;
  - there must be a causal relationship between disclosure and prejudice to those interests. This prejudice must be real, actual or of substance; and

- the Home Office must show that the level of prejudice it envisages is met – i.e. it must demonstrate why disclosure “would be likely” to result in prejudice or, alternatively, why disclosure “would” result in prejudice.
17. The complainant argued that the Home Office did not sufficiently explain the causal link between the specific information requested and the potential harm of disclosure and cited the Information Tribunal decision in Hogan and Oxford City Council v Information Commissioner EA/2005/0026 and 0030<sup>1</sup> to support their argument that the prejudice test had not been properly considered by the Home Office.
  18. The Home Office explained to the Commissioner:

“If this information was to be disclosed it would prejudice the operation of immigration controls because individuals could seek to modify their actions based on knowledge of the ‘control areas’ and biometric systems in place to give them a greater chance of entering the UK unimpeded, and therefore harm the operation of the immigration controls.

Taking the above into account, it is our strongly held view that disclosure would prejudice the operation of immigration controls.”
  19. The Commissioner has considered whether the three criteria set out in paragraph 16 above have been met in respect of the withheld information.
  20. The Home Office has argued that disclosure would interfere with and undermine attempts to prevent illegal immigration into the UK. This is clearly a matter which relates to the operation of the immigration controls and the Commissioner is satisfied that the first criterion is met.
  21. The Commissioner went on to consider the complainant’s argument that the Home Office has not laid out what harm it foresees occurring, or the casual link between the specific information and that harm. The Commissioner notes the complainant’s contention that, because interested individuals already know that facial recognition is used in specific places in airports, disclosing the written notices would not give additional location data and that, therefore, no harm could follow from disclosure.

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<sup>1</sup> [H- -V1](#)

22. The Commissioner notes that there is already information in the public domain about the use of facial image recognition and when and where this takes place at Gatwick Airport. The Commissioner notes that the written notice issued under the Immigration Act 1971 Schedule 2 Paragraph 26(3), which has been requested by the complainant, is referred to on the Airport's website. Similar information is available on Heathrow Airport's website. The Commissioner is aware that information in respect of Heathrow has not been requested, however it is clear that neither airport is concerned that making this information public would affect its ability to maintain effective immigration controls.
23. Having read the written notice in respect of Gatwick, the Commissioner is of the view that the written notice does not add anything to what is already in the public domain.
24. The Commissioner notes that Manchester Airport does not have similar information on its website as Gatwick Airport in respect of the use of facial image recognition.
25. The Commissioner has not been presented with credible evidence by the Home Office that disclosure of the written notice for Manchester Airport would be of assistance, when pieced together with other information, to those planning to evade or undermine immigration controls. The written notice contains very generic information and does not reveal any specific measures (other than those already known to be in use at other UK airports) that Manchester Airport may have in place to maintain effective border controls. Furthermore, the written notice has been in place for some time and the public will be familiar with the processes at Manchester Airport when they are travelling.
26. Given that Heathrow and Gatwick Airports already publish equivalent information, it is not clear why disclosing such information about Manchester Airport would make its immigration controls any less effective than those of Heathrow or Gatwick Airports.
27. The Commissioner is therefore not satisfied that section 31(1)(e) of FOIA is engaged in respect of either written notice and they should be disclosed.
28. As the Commissioner considers that section 31(1)(e) is not engaged, he has not gone on to consider the public interest test.

### **Procedural matters**

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29. Section 10 of FOIA states that non-exempt information must be communicated to a requestor within 20 working days. With the delay in

responding to the complainant's request and failing to disclose all non-exempt information within 20 working days, the Home Office breached section 10.

## Right of appeal

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30. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**