

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2025

Public Authority: Serious Fraud Office
Address: 2-4 Cockspur Street
London
SW1Y 5BS

Decision (including any steps ordered)

1. The complainant requested information relating to its use of specific software. The Serious Fraud Office (SFO) denied holding some information within the scope of the request and refused to provide the remainder, citing sections 31(1) (law enforcement) and 22 (information intended for future publication) of FOIA.
2. The Commissioner's decision is that, on the balance of probabilities, the SFO does hold information in scope of part 1(a) of the request. The SFO therefore failed to comply with section 1 of FOIA (general right of access to information).
3. The Commissioner also finds that the SFO was not entitled to apply section 22 to the information in scope of part 3 of the request. However, he finds that it was entitled to rely on section 31(1)(b) and (c) to withhold the information in scope of parts 1(b) and 4 of the request.
4. The Commissioner requires the SFO to take the following steps to ensure compliance with the legislation:
 - issue a fresh response to part 1(a) of the request confirming it holds the information and either disclose that information or issue a refusal notice which complies with section 17(1) of FOIA;
 - disclose the information in scope of part 3 of the request.
5. The SFO 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

6. By way of background, the SFO told the Commissioner:

"This request relates to two different issues affecting our e-discovery software (the system we use to process material on our cases). Autonomy is our historic system and Axcelerate is our current system".

Request and response

7. On 2 May 2024, the complainant wrote to the SFO and requested information in the following terms (numbers added for ease of reference):

"I am writing to request further information on the SFO's OpenText Axcelerate and Autonomy Introspect software systems.

In a statement in response to recent reporting, the SFO confirmed it was informing defendants in all affected cases about issues with OpenText Axcelerate.

1. Please confirm the number of defendants that have been informed and the number of cases affected (parts 1(a) and (b) respectively).

The SFO added it had deployed an effective solution.

2. Please confirm the estimated cost of deploying this solution

The reporting further suggests cases involving Autonomy Introspect are being reviewed.

3. Please confirm the number of cases being reviewed.

4. Please also provide copies of minutes of any meetings involving staff at either board or executive level from 1 January 2023 to 2 May 2024 that reference either OpenText Axcelerate or Autonomy Introspect, and any internal memos referencing the same."

8. The SFO responded on 30 May 2024. It confirmed it holds the requested information but refused to provide it, citing section 31(1) (law enforcement) of FOIA.

9. Following an internal review, the SFO wrote to the complainant on 24 June 2024 confirming its application of section 31(1) to the information in scope of parts 1, 3 and 4 of the request. However, it revised its response to part 2, denying that it holds information within scope of that part of the request.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They disputed that section 31 had been applied correctly. Nor did they consider that the SFO had given sufficient weight to the public interest in disclosure.
11. During the course of the Commissioner's investigation, the SFO revised its position:
 - it denied holding information in scope of part 1(a) of the request;
 - it confirmed its application of section 31(1) to parts 1(b) and 4; and
 - it said that it was now relying on section 22(c) (information intended for future publication) of FOIA to withhold the information in scope of part 3 of the request.
12. The complainant remained dissatisfied.
13. The Commissioner accepts that a public authority has the right to claim an exemption for the first time before the Commissioner or the Tribunal. The Commissioner does not have discretion as to whether or not to consider a late claim, as in this case.
14. Having confirmed the scope of his investigation with the complainant, the Commissioner progressed his investigation. As is his practice, the Commissioner asked the SFO to provide him with the withheld information. The Commissioner acknowledges that the SFO provided a representative sample of the information in scope of part 4 of the request.
15. The analysis below considers:
 - whether the SFO holds information in scope of part 1(a) of the request, namely the number of defendants that have been informed about issues with Axcelerate;
 - the SFO's application of section 31 to the information in scope of parts 1(b) (the number of cases affected by issues with Axcelerate) and 4 (copies of minutes) of the request; and,

- the SFO's application of section 22 to the information in scope of part 3 of the request.

Reasons for decision

Section 1- general right of access

16. This part of the decision notice concerns section 1(1) of FOIA. Details of this section of FOIA and how it is applied in a decision notice can be found in the Commissioner's [Decision notice support materials | ICO](#).
17. Arguing that it does not hold information relating to part 1(a) of the request, the SFO simply told the complainant:

"... in general, the relevant case team will inform defendants who may be affected by these issues, therefore we do not hold a central figure".
18. The complainant considers that, if the SFO is able to inform defendants on an individual basis, "surely it can collate this data into an aggregate number with relative ease".
19. As is his practice, the Commissioner asked the SFO to explain its reasons for stating that it does not hold the requested information.
20. The SFO told the Commissioner that the information in scope of this part of the request is not held by the SFO centrally or at divisional level.
21. It explained that, while each team will know to whom they have written, as it is not information that needs to be reported centrally, they will not have a specific record that tracks it.
22. It told the Commissioner:

"Therefore teams would need to collate the information requested by searching their correspondence. It should not be supposed that is a straightforward task".

The Commissioner's view

23. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
24. In other words, in order to determine such complaints the ICO must decide whether, on the balance of probabilities, a public authority holds

any information which falls within the scope of the request (or was held at the time of the request).

25. The Commissioner, therefore, expects a public authority, where appropriate, to provide full details of its searches to support its conclusions.
26. The Commissioner acknowledges that the SFO explained that the information about who has been notified is only known to each individual case team and is not held centrally by the SFO.
27. However, he is also mindful that his guidance¹ states:

“If you have the “building blocks” necessary to produce a particular type of information, it is likely that you would hold that information unless it requires particular skills or expertise to put the building blocks together”.
28. Taking all the above into account, the Commissioner cannot be satisfied that the SFO has demonstrated that it has carried out reasonable searches to identify the relevant information it holds that falls in scope of part 1(a) of the request.
29. It follows that he cannot be satisfied, on the balance of probabilities, that the SFO does not hold information in scope of that part of the request.
30. The SFO has therefore breached section 1(1)(a) of FOIA and should comply with the step at paragraph 4 above.
31. The Commissioner has next considered the SFO’s application of section 31 to the information in scope of parts 1(b) and 4 of the request.

Section 31 - law enforcement

32. Section 31 of FOIA provides a prejudice based exemption which protects a variety of law enforcement interests.
33. In this case, the SFO is citing section 31(1)(b) and (c), on the basis that disclosure would, or would be likely to, prejudice the apprehension or prosecution of offenders and the administration of justice.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/#create>

34. The SFO has relied on the same reasoning for the citing of both limbs of the exemption. The Commissioner recognises that there is an overlap within these limbs of section 31(1) and so he has considered them jointly here.
35. Consideration of section 31(1) 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.
36. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner advises public authorities to consider the following three questions:
 - which law enforcement interest(s), protected by section 31, could be harmed by the disclosure?
 - is the harm you have identified real, actual or of substance and is there a causal link between disclosure and that harm?
 - what is the likelihood of that harm actually occurring: would it occur, or is it only likely to occur?

The SFO's position

37. The SFO considers section 31(1) applies to the requested information in scope of parts 1(b) and 4 of the request. That is, the number of cases affected by issues with the current system, Axcelerate, and the requested minutes and internal memos.
38. The SFO argued that to disclose the requested number, in scope of part 1(b) of the request, might cause harm to its work, particularly if the number is small.
39. In support of its view, it took into account any harm likely to arise if someone pieced together the requested information with other information to form a broader picture. It considered this becomes more likely if FOI requests are submitted regularly, allowing the public to track changes over time.
40. With respect to its application of the exemption to the information in scope of part 4 of the request, the SFO told the complainant that disclosure might cause harm to its work. It explained that disclosure would prevent the sharing of full and frank advice within the SFO not only about Axcelerate or Autonomy, but, by setting precedent, about other law enforcement matters.
41. The SFO provided further information in support of its application of the exemption in its submission to the Commissioner. For example, it

described the SFO as a public authority "with an extremely small and specialist caseload" and explained that it is an organisation "of high interest to sophisticated criminal networks and organised crime groups".

42. With regard to the likelihood of harm actually occurring as a result of disclosure, the SFO variously cited 'could', 'might' and 'would'. For example, it said that disclosure of the requested number could allow the wider public to deduce which cases are being considered.
43. To the extent that they involve specific discussions on investigations, the SFO considered that disclosure of internal SFO communications on the e-discovery software issues would prejudice its ability to perform its functions effectively.
44. The Commissioner understands that the SFO publishes senior level meeting minutes, with meetings between SFO senior leadership and the Law Officers published by the Attorney General's Office. However, the SFO told him:

"The minutes of other casework meetings are not automatically published, as to do so would prejudice our ability to perform functions effectively".

The Commissioner's position

45. The Commissioner acknowledges that the SFO fights complex financial crime, and that, in doing so, it takes on a small number of large economic crime cases.
46. Although limited in what he is able to say without disclosing the withheld information in scope of part 4 of the request, the Commissioner is satisfied that the requested internal communications involve specific discussions about the SFO's e-discovery software.
47. With regard to the first of the questions set out above, the Commissioner is satisfied that the actual harm which the SFO alleges would, or would be likely, to occur if the withheld information was disclosed relates to the interests protected by section 31(1)(b) and (c).
48. With regard to the second question posed, he is satisfied that there is a causal link between disclosure of the information and a risk to either, or both, of the apprehension or prosecution of offenders as well as to the administration of justice.
49. The Commissioner accepts the SFO's argument that the requested figure provides information about the workload of the SFO. He also accepts that the other information withheld by virtue of this exemption concerns internal discussions relating to the SFO's e-discovery software.

50. It is not implausible to argue that such information would be of interest to criminals and that such information could potentially be used to evade apprehension or prosecution and to undermine the work of the SFO such as to prevent it from performing its functions effectively.
51. Such actions would clearly be prejudicial to law enforcement.
52. The second criterion is therefore met.
53. In terms of whether disclosure presents a real and significant risk of prejudice occurring, having duly considered the arguments put forward by the SFO, the Commissioner takes the view that the lower level of harm – would be likely to - has been demonstrated.
54. The Commissioner is therefore satisfied that section 31(1)(b) and (c) is engaged.

Public interest test

55. Section 31 is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
56. The complainant considers that the first part of their request is only for an aggregate number of cases, not sensitive details about specific cases.
57. They also argued:

“Law enforcement failures can cost the public millions. To understand how and why the software issues happened is critical for the SFO's continued success”.
58. The SFO recognises the general public interest in publicising information about its work. It also said that it had taken into consideration that there is “heightened interest” in the topic under consideration in this case.
59. It told the Commissioner that the SFO balances the need for transparency “with the need to protect our investigations and prosecutions”. It advised that, in line with that commitment, it publishes an annual report and shares its priorities via its business plan. However, it told the Commissioner it does not publish details on its ongoing investigations and lines of inquiry.
60. In the circumstances of this case, however, it noted that:

"... [SFO] spokespeople including our Chief Operating Officer have spoken to the media about this issue to inform the public about the steps we have taken in relation to Axcelerate/Autonomy".

61. In favour of maintaining the exemption, it argued that it is important that the SFO strikes the right balance between transparency and protecting its investigative process.
62. In support of its position, the SFO told the Commissioner that the majority of its cases are covert. It explained that disclosing the number of cases affected on Axcelerate could, in turn, lead to suspects changing their behaviour. It argued that, of particular concern, would be changes which resulted in individuals placing themselves, or their assets, out of its reach and destroying potential evidence.
63. Acknowledging the public interest in its work, the SFO nevertheless stressed the importance of its case teams making information public "as and when it is appropriate so as not to compromise the integrity of our investigations".
64. Arguing in favour of maintaining the exemption, it told the Commissioner:

"The SFO has a responsibility to release information in the right way at the right time so as to not undermine its core functions and to administer justice in the most effective manner possible.

[...]

Therefore, releasing information about our cases pertaining to this internal investigation would allow individuals – including those undertaking criminality – to use information released to their advantage to undermine the SFO's ability to protect the UK economy, which is more strongly in the public interest than the interest in SFO action from members of the public".

65. In reaching a view in this case, the Commissioner accepts that it is important for the general public to have confidence in the UK's law enforcement capabilities. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
66. In the context of this case, the Commissioner recognises the public interest in the SFO being open and transparent about its ongoing investigation into issues with Autonomy and Axcelerate, including the scale of the investigation and what its internal process has been around addressing technical problems with its e-discovery software.

67. However, he also recognises that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – that is, the public interest in avoiding prejudice to the apprehension or prosecution of offenders and to the administration of justice.
68. From the evidence he has seen in respect of the requested number of cases affected by the issue, he gives weight to the argument that it would not be in the public interest if, as a result of disclosure, suspects have access to information which could assist them to change their behaviour and evade apprehension or prosecution.
69. In respect of the requested internal communications, he accepts that the SFO has confirmed that it has proactively briefed media and stakeholders, for example on the nature of the issues involved. He is also aware that he accepted, above, that disclosure of the information would be likely to prejudice the SFO's law enforcement functions.
70. Having considered the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of disclosure do not equal or outweigh those in favour of maintaining the exemption. Accordingly, the Commissioner is satisfied that section 31(1)(b) and (c) of FOIA were appropriately applied to parts 1(b) and 4 of the request.

Section 22 – information intended for future publication

71. The Commissioner has next considered the SFO's application of section 22 to the information in scope of part 3 of the request. That information comprises the number of cases involving the historic system, Autonomy, being reviewed.
72. Section 22 provides an exemption for information that is intended to be published in the future.
73. Information is exempt if, at the time when the public authority receives a request for it:
 - the public authority holds the requested information;
 - the public authority intends the information to be published at some future date, whether that date is determined or not; and
 - in all the circumstances it is reasonable to withhold the information until its planned publication.
74. It is a qualified exemption and therefore public authorities must consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing the requested information.

75. There are, therefore, four questions to consider:

- Is there an intention to publish the requested information at some future date?
- Was the information already held with a view to publication at the time the request was made?
- Is it reasonable to withhold the information from disclosure until the intended date of publication?
- Does the public interest favour maintaining the exemption or disclosing the information?

76. There is some overlap between the factors to consider when deciding what is reasonable and those which are relevant to the public interest test. The Commissioner has, therefore, taken into account the SFO's public interest considerations where they are relevant to the question of whether it is reasonable to withhold the information until the intended publication.

77. With respect to its application of section 22, the SFO told the complainant:

"At the conclusion of our full review of cases potentially affected by the Autonomy issue, we plan to publish information on the scale of our review, alongside information on our findings, after we have informed any affected defendants. We believe this is the right approach to take as a responsible prosecutor".

78. Similarly, it told the Commissioner:

"..., we intend to share further information regarding this work as our review continues, with information on the outcome of all reviews expected next year. We plan for this to come after we have already shared this information with defendants first...".

79. In further support of its decision to withhold the information under section 22, it said:

"... it would be unfair to the defendants in these historic cases which are under investigation, but who may not have yet been contacted, for us to release partial information is likely to lead to unnecessary concern [sic]".

80. It also argued that disclosure could lead to a delay in its internal investigations, while it responds "to all those likely to contact us in the wake of reporting on this issue".

81. Regarding a date for publication, the SFO told the Commissioner:

"No date has been set for the publication. We expect the date [of] release will be after the SFO has provided information to an initial tranche of individuals about their case and what stage the review it is at in respect of their case. These notification letters are expected to go out at the end of January or beginning of February".

82. In response to a direct question from the Commissioner, it also confirmed that, prior to the request being submitted, it already had the intention to publish this information.

The Commissioner's view

83. In accordance with the Commissioner's guidance, in order to engage the exemption, the public authority does not need to have set a specific publication date, but it must have already had a settled intent to publish the information before the request was made and it must be intending to publish all the requested information – not just parts of it.
84. The Commissioner accepts that, although it has not yet determined the publication date, the SFO intends to publish information about its review work.
85. The Commissioner must also consider whether the information that the SFO intends to be published is the specific information the applicant has requested. He accepts that the SFO has variously referred to its intention "to share further information" and "the scale of the review".
86. In this case, having considered the SFO's responses, the Commissioner is satisfied that the information the SFO intends to publish will include the information requested by the complainant that was held at the time of the request.
87. The Commissioner has next considered whether, in all the circumstances, it is reasonable to withhold the information from disclosure until its publication at some time in the future.
88. The Commissioner recognises that, the closer to the date of publication, the more reasonable it is likely to be for a public authority to withhold the information until publication has taken place.
89. He accepts that the SFO considers that the approach it intends to take is the right approach to take as a responsible prosecutor. He also recognises that the SFO is mindful of the need to use its staff resources in a way that avoids disruption to its other work, including its internal investigations.
90. The Commissioner accepts that, although there was no fixed publication date at the time of the request, the SFO intends to publish the information once other actions have been completed, namely when it

has completed its internal investigation and informed any affected defendants.

91. From the evidence he has seen, the Commissioner does not consider that the completion of those activities gives rise to an intended publication close to the date of the request. It is also not entirely clear whether the SFO intends to publish the actual number of Autonomy cases that have been reviewed.
92. Furthermore, having considered the arguments put forward by the SFO, the Commissioner considers that it failed to evidence the likely impact on any defendants who may be affected by disclosure, making only generic statements about discomfort for individuals. He also considers it failed to evidence the likely impact on its own investigations if the information is disclosed as a result of this request.
93. In light of the above, the Commissioner does not find that the SFO has demonstrated that it is reasonable to withhold the requested information prior to publication.
94. It follows that he does not find section 22 engaged.
95. In light of that finding, the Commissioner has not gone on to consider the public interest test. The SFO should comply with the step at paragraph 4 above.

Right of appeal

96. 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

97. 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.
98. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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