

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 February 2016

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

### Decision (including any steps ordered)

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1. The complainant requested information relating to an extradition request he believed had possibly been made. The Home Office refused to confirm or deny whether it held this information and cited the exemptions provided by sections 23(5) (information relating to or supplied by security bodies) and 27(4) (international relations) of the FOIA. The Commissioner's decision is that the Home Office was entitled to rely on the exemption at section 23(5) to neither confirm nor deny whether it held information within the scope of the request which, if held, would be exempt by virtue of section 23(1) of the FOIA. He requires no steps.

### Request and response

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2. On 30 April 2015 the complainant wrote to the Home Office and requested information in the following terms:  
  
*"Documents concerning a possible extradition request and arrest warrant that may have been issued for the US citizen, Elaine Antoinette Parent from Florida law enforcement."*
3. The Home Office responded on 19 May 2015. It refused to confirm or deny whether the requested information was held and cited the exemptions provided by sections 23(5) (information relating to, or supplied by, security bodies) and 27(4) (prejudice to international relations) of the FOIA.

4. The complainant responded on 19 May 2015 and requested an internal review. The Home Office responded with the outcome of the internal review on 4 June 2015. The conclusion of this was that the refusal to confirm or deny under sections 23(5) and 27(4) was upheld.

## **Scope of the case**

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5. The complainant contacted the Commissioner on 5 June 2015 to complain about the refusal of his information request. The complainant stated that he did not agree with the reasons given by the Home Office for the refusal of his request. The Commissioner has considered below whether the Home Office is entitled to neither confirm nor deny holding any information by virtue of any of the exemptions cited.

## **Reasons for decision**

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### **Section 23**

6. The Home Office has cited section 23(5). This section provides an exemption from the duty to confirm or deny in relation to information which, if it were held, would have been directly or indirectly supplied by, or relate to, any of a list of security bodies given in section 23(3). If the wording of the request suggests that any information falling within its scope would be within the class described in section 23(5), the exemption is engaged. There is no requirement to go on to consider what the results of disclosure of the confirmation or denial may be, nor whether confirmation or denial would be in the public interest.
7. The issue for the Commissioner here is whether it would be reasonable to expect that any information falling within the scope of the request would have been supplied by or relate to a section 23(3) body. On this point it may be possible to argue that an entire class of information would fall within that description. For example, if a request specifically asked for information supplied by the Security Service, this exemption would clearly apply. The exemption may also be engaged by a less direct route. An example of this is found in a number of decisions made by the Commissioner and the Tribunal that police Special Branch has such a close working relationship with section 23(3) bodies that section 23(5) is likely to be engaged in relation to any request for Special Branch information.
8. The test as to whether a disclosure would relate to a security body is decided on the normal civil standard of proof, that is, the balance of

probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the section 23 exemption would be engaged.

9. From this it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
10. In this case the Commissioner has considered whether, in relation to this particular request, it is the case that any extradition process and or related arrest warrant is likely to have involved section 23(3) bodies and if so section 23(5) would be engaged on that basis. He has also considered what evidence there is to suggest that any section 23(3) body would more likely than not have been involved or had an interest in any extradition process and or related arrest warrant relating to the individual named in the request.
11. The argument of the Home Office as to why this exemption was engaged related to the individual named in the request, although its position appeared to also be that it was likely that any information relating to extradition and or arrest warrant would be within the class described in section 23(5) when arguing that:

*"The information requested relates to the procedures to apprehend and possibly prosecute an individual. This information, if it existed, could have either originated from, or been referred to, one of the section 23 bodies. Therefore, if any such documents did or did not exist this information may have been supplied by, or relate to, one of the bodies listed under section 23 of the Act."*
12. The Commissioner does not agree that it is reasonable to expect that *any* extradition and or arrest warrant would be of interest to section 23(3) bodies. Where an extradition and or arrest warrant related to charges of terrorism for example, clearly there is a strong likelihood that security bodies would have an interest. However, extradition may also be requested in relation to charges that would not appear to be within the ambit of security bodies' operations and would not, therefore, be of interest to the security bodies.

13. The Commissioner's published guidance<sup>1</sup> on this exemption states that a request must be "*in the territory of national security*" in order for 23(5) to be relevant. This means there has to be a realistic possibility that a security body would be involved in the issue the request relates to. The clear potential for an extradition request and or arrest warrant to be of no interest to any section 23(3) body means that the Commissioner does not accept that section 23(5) is engaged on the basis that it is necessary to cite this in response to any request that relates to extradition.
14. Although the Home Office did not make arguments on this point, in view of his finding above the Commissioner has gone on to consider what evidence there is that, if the extradition request and or arrest warrant referred to in the information request did occur, it would have been of interest to any section 23(3) body.
15. The Home Office whilst not submitting specific arguments did make reference to section 23 bodies including the National Crime Agency and the former Serious and Organised Crime Agency, in its refusal notice.
16. The complainant argued that the search for Elaine Antoinette Parent, related to the murder of US citizen, Beverly McGowan, and that as this was a criminal matter, national security and section 23(5) should not apply.
17. Brief research reveals that the individual named in the request was an American citizen who spent several years living in the UK, apparently whilst evading a murder charge<sup>2</sup>. There was also reporting that this individual may have had involvement in other suspected murders and regularly travelled between America and the UK. In addition reporting suggested she may have actually been on the run since 1985 after being implicated in a jewel theft<sup>3</sup>. It was reported that the US State Department, the FBI and Scotland Yard were consulted during the hunt to find her. In the circumstances, the Commissioner considers that it is not unreasonable to expect that such matters and the desire to catch

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1182/security\\_bodies\\_section\\_23\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1182/security_bodies_section_23_foi.pdf)

<sup>2</sup> <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/1391705/Chameleon-Killer-cheats-the-Florida-police-by-ending-her-many-faced-life.html>

<sup>3</sup> <http://www.theguardian.com/theguardian/1999/mar/11/features11.g22>

this individual would be likely to have resulted in some involvement of one or more of the bodies listed in section 23(3).

18. The Commissioner has found that there is evidence that is suggestive of security body interest or involvement in the subject of the complainant's request. Combined with his finding above that it is reasonable to expect, on the balance of probabilities that any extradition request and or arrest warrant, relating to this particular individual, would likely be of security body interest, this means that the Commissioner's view is that it is also reasonable to expect that any information falling within the scope of the request would relate to, or have been supplied by one or more of the security bodies identified in section 23(3).
19. The Commissioner is satisfied that complying with the requirements of section 1(1)(a) would be likely to reveal whether or not the security bodies were interested in the subject matter of this request. His conclusion is, therefore, that the exemption provided by section 23(5) of the FOIA is engaged. He has not therefore needed to consider the application of section 27(4).

## Right of appeal

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20. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

21. 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.
22. 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 .....**

**Gerrard Tracey  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
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SK9 5AF**