

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 August 2010

Public Authority: Northern Ireland Office
Address: 11 Millbank
London
SW1P 4PN

Summary

The complainant requested information from the Northern Ireland Office (NIO) relating to the number of District Policing Partnership (DPP) members that had applied to be included in home or personal protection schemes over the last five years, the number of applications accepted/rejected and details of the the specific DPP to which applicants belonged. The NIO refused to disclose the requested information, citing the exemptions at sections 24, 38 and 31 of the Act. The Commissioner finds that the exemptions have been correctly applied, and that the NIO acted correctly in refusing to disclose the requested information in reliance on sections 24, 38 and 31. Therefore the Commissioner requires no further steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act).

Background

District Policing Partnerships

2. A DPP is a partnership between the district council, councillors and representatives of the local community for the purpose of monitoring the effectiveness of policing in that area. Typically a DPP shall consist of 15, 17 or 19 members.

3. DPP members include members of the public who can demonstrate an interest in their local community, community safety or community policing issues. This can be gained either through employment or participation in the community voluntary sector. Detail of the membership of DPPs is publicly available.

Protection Schemes

4. The Northern Ireland Office (the NIO) operates a home protection scheme, known as the Limited Home Protection Scheme (LHPS), which was previously known as the Key Persons Protection Scheme (KPPS).
5. The LHPS is a limited discretionary scheme to protect the homes (and occasionally the workplaces) of certain individuals considered to be under a substantial or greater terrorist threat. In making decisions for admission to the LHPS Ministers consider the individual's job or occupation, any wider role that he/she might be fulfilling and a threat assessment supplied by the Chief Constable¹.

The Request

6. On 10 February 2009 the complainant requested the following information from the NIO:

"How many District Policing Partnership members have applied to be included in home or personal protection schemes in the past five calendar years?

How many applications were accepted to each individual scheme?

How many applications were rejected?

Identify the specific District Policing Partnership the applicant was/is a member of?

Where an application was rejected, state the reason why? "

7. On 9 March 2009 and again on 18 March 2009 the NIO wrote to Mr Young stating that it required additional time to consider the public interest in relation to his request.

¹ Devolving Policing and Justice in N Ireland: a discussion paper, Devolution Unit, NIO

8. On 26 March 2009 the NIO provided a substantive response to the complainant's request. The NIO stated that the requested information was exempt from disclosure under section 24 (national security), section 31 (law enforcement) and section 38 (health and safety) of the Act. The NIO also stated that the public interest arguments in favour of withholding the requested information outweighed the arguments in favour of disclosure.
9. On 27 March 2009 the complainant requested an internal review of this decision.
10. On 8 May 2009 the NIO provided its internal review response, which upheld the original decision not to disclose the requested information.

The Investigation

Scope of the case

11. On 23 July 2009 the complainant contacted the Commissioner to complain about the way his request had been handled. Whilst the complainant did not specify any particular reason why this information should be disclosed the scope of the Commissioner's investigation will include the NIO's handling of this case, the application of the exemptions claimed and the balance of the public interest as it applies to the qualified exemptions cited.

Chronology

12. On 7 April 2010 the Commissioner wrote to NIO regarding the way in which it had handled the complainant's request. In addition to requesting a copy of the withheld information the Commissioner also asked for the NIO's representations regarding its application of exemptions.
13. On 13 May 2010 the NIO responded to the Commissioner, providing a copy of the withheld information and further detailed arguments in support of non disclosure of the requested information.
14. The NIO contended that given the level of detail and breakdown that the complainant had requested, disclosure of the information would compromise both national security and the personal security and safety of individuals. It would also be likely to prejudice law enforcement by providing terrorists with intelligence to which they would not otherwise have had access.

Analysis

Exemptions claimed

Section 24(1) – national security

Section 38(1) – health and safety

Section 31(1) – law enforcement

15. In this instance the NIO refused to disclose the requested information citing the exemptions at sections 24, 38 and 31 of the Act. The Commissioner considers that there are natural links between section 24 and section 38 in the circumstances of this case and therefore the Commissioner considers it appropriate to examine these exemptions together. If the Commissioner finds that either exemption does not apply, he will consider section 31.

Section 24(1) – national security

16. Section 24(1) provides that information is exempt from disclosure if the exemption is required for the purpose of safeguarding national security - the exemption does not apply simply because the information relates to national security. Although the term 'required' is not defined in the Act, it means something more than desirable and in effect it must be necessary. The Commissioner interprets "national security" to mean the security of the UK, its system of government and its people. The NIO has advised the Commissioner that
- "The individuals protected under the LHPS... are in occupations or posts considered to be of importance to national security and those admitted to the Scheme are under a substantial or severe threat of terrorist attack".
17. In terms, therefore, of the NIO's security policy, the section 24(1) exemption will be required where the disclosure of information would, or would be likely to, prejudice the safety of individuals protected by such schemes.
18. In its internal review the NIO explained to the complainant that disclosure of information withheld under this exemption would facilitate the targeting of individuals by terrorists. These arguments were outlined in further detail in the NIO's representations to the Commissioner.
19. The NIO contended that providing the requested level of detail and breakdown of information in relation to DPP members could lead to the

identification of individuals who have been protected and those who have not. This would facilitate the targeting of individuals by terrorist organisations, which would be likely to prejudice national security. In addition it would be likely to result in the LHPS losing credibility and would be likely to compromise the security of individuals considered to be important to national security.

Section 38(1) – health and safety

20. Section 38(1) provides an exemption from disclosing information if to do so would be likely to endanger the health or safety of any individual. The Commissioner's view is that the public authority must be able to point to endangerment which is "real, actual or of substance". Although judging whether there might be a risk to physical health or safety is unlikely to be a particularly technical matter, public authorities must still demonstrate that disclosure of the requested information would or would be likely to endanger the safety of any individual.
21. In this instance, given that disclosure of the information would identify individuals whose applications had been rejected from the LHPS and therefore whose homes would not be protected, the NIO argued that the risk of endangering the health and safety of such individuals would be likely to be increased as would their vulnerability to attack by terrorists.

Engagement of the exemptions

22. The Commissioner accepts that disclosure of the information in this case would provide terrorists with information which would undermine the purpose and integrity of the LHPS in respect of personnel who are considered to be important to national security. Therefore the Commissioner finds that the exemption at section 24(1) is engaged. The Commissioner is also of the view that, given the interaction between the exemptions cited and the real possibility of endangerment to DPP members, the exemption at section 38 is also engaged.

Public interest test

23. The exemptions in section 24 and section 38 are qualified exemptions and it is therefore necessary to consider in respect of each exemption whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

24. The NIO accepted that there is a public interest in releasing information in relation to DPP members admitted to personal protection schemes, in order to illustrate operational transparency and value for money and to demonstrate that the State is fulfilling its obligations under Article 2 of the European Convention for Human Rights to those individuals under threat.
25. In view of this the NIO had previously released information² under the Act regarding the number of individuals covered by the LHPS and the associated costs involved to the public purse because it believed that it was in the public interest to release information that demonstrated the value for money and transparency of the LHPS.
26. The Commissioner considers that there is a general public interest in how public authorities carry out key functions. In this case disclosure of the withheld information would inform the public about the operation of the LHPS by the NIO in relation to protecting DPP members.

Public interest arguments in favour of maintaining the exemptions

27. In favour of maintaining the exemptions, the NIO put forward a number of public interest arguments.

Section 24(1)

28. The NIO drew attention to the fact that individuals protected under the LHPS were in occupations or posts considered to be important to national security. This in itself meant that it was not in the public interest to facilitate the targeting of such individuals and thus compromise their security and the credibility of the LHPS by disclosing the detailed information requested.
29. The NIO also argued that it was not in the public interest to compromise the NIO's duty to protect such individuals by releasing specific information about which members were protected by the LHPS and those who were not. The LHPS itself aimed to protect individuals, so there would be little public interest in disclosing information which might curtail its effectiveness.

² http://www.nio.gov.uk/index/foi/recent_releases/september_2005_foi_releases.htm

Balance of the public interest arguments

30. The Commissioner has considered these arguments and weighed the competing public interest factors for and against maintaining the exemption. The Commissioner recognises that there is a general public interest in the NIO disclosing information on this particular topic.
31. However the Commissioner is mindful of the fact that what interests the public is not the same as what is in the public interest. In particular, the Commissioner's view is that the exemption at section 24 only applies when it is necessary to safeguard national security and therefore there are strong public interest factors in favour of maintaining the exemption and not disclosing the information.
32. Given the very considerable weight inherent in the need to safeguard national security, where this exemption has been claimed the Commissioner considers that there must be equally weighty public interest factors in favour of disclosing the information requested in order to justify overturning the public authority's decision.
33. In addition, the Commissioner notes that in acknowledgement of the public interest the NIO has already released some general information, as referred to earlier, regarding the operation of the LHPS. The NIO has not however disclosed any more detailed information about individuals in particular roles or occupations, nor the detail of security measures which may or may not be provided.
34. The Commissioner recognises the considerable public interest in protecting individuals who are contributing to the normalisation of Northern Ireland by participating in DPPs. Whether or not these individuals are granted assistance under the LHPS, the fact is that these individuals consider themselves to be at risk. The Commissioner considers that the disclosure of information which could identify whether an individual received protection, could deter individuals from participating in DPPs, which would not be in the public interest.
35. Taking account of these arguments the Commissioner concludes that the public interest in maintaining the exemption at section 24 far outweighs that in favour of disclosing the requested information.

Section 38(1)

36. In relation to section 38, the NIO contended that there was a strong public interest in protecting the health and safety of those individuals serving as DPP members. Disclosure of the requested information would facilitate the identification of those members who had been

refused membership of the LHPS and thus for whom no protection exists. This in turn would increase their vulnerability to attack and endanger their health and safety.

Balance of the public interest arguments

37. The Commissioner has weighed the competing public interest factors for and against maintaining this exemption. The Commissioner's view is that the risk to the safety of individuals as a result of disclosure of the requested information must be weighed against the benefit of that disclosure in terms of informing public debate about who receives protection and how such decisions are made.
38. In this instance, he has concluded that the public interest in maintaining the exemption outweighs that in disclosure of the requested information.
39. The Commissioner therefore considers that in all the circumstances of this case that the information has been correctly withheld under section 24 and section 38. In view of this he has not gone on to consider the exemption at section 31.

The Decision

40. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

41. The Commissioner requires no steps to be taken.

Right of Appeal

42. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 16th day of August 2010

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1(1) provides that -

Any person making a request for information to a public authority is entitled

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- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

Section 24(1) provides that –

Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

Section 31(1) provides that –

Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in the institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue

of powers conferred by or under an enactment.”

Section 38(1) provides that –

Information is exempt information if its disclosure under this Act would, or would be likely to –

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.