

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 March 2012

**Public Authority:** The Security Industry Authority (SIA)

**Address:** PO Box 49768  
London  
WC1V 6WY

#### Decision (including any steps ordered)

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1. Following a previous related complaint to the Information Commissioner, the complainant requested information about the investigation or other use made by the Security Industry Authority (SIA) of intelligence he had provided to it. The Information Commissioner's decision is that SIA was correct to rely on section 30(3) to refuse to confirm or deny whether it held any relevant information and the balance of the public interest favoured maintaining the exemption. The Information Commissioner does not require any steps to be taken to ensure compliance with the legislation.

#### Request and response

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2. SIA is the organisation responsible for regulating the private security industry. It is an independent body reporting to the Home Secretary, under the terms of the Private Security Industry Act 2001.
3. The Information Commissioner issued his decision notice FS50371782 on 25 July 2011 (the previous case), deciding in favour of SIA.
4. On 1 August 2011 the complainant wrote to SIA and requested information in the following terms, and referred to intelligence he himself had provided to SIA on 24 May 2010:

*"Any investigation will by now have been closed for some time and so there would be no impact or prejudice in the investigation if information relating to that investigation were now released."*

*Consequently, please provide any information relating to the investigation or other use of the intelligence I provided referred to above, for example, but not limited to, the investigation's conclusion, result, assessments, decisions and action taken, etc."*

5. The information request was closely related to the information request dated 28 June 2010 in the previous matter.
6. The complainant stressed to SIA, and later to the Information Commissioner, that it was by that time (August 2011) over a year since he had first raised with SIA the issue about an employee of a security firm who, the complainant said, had failed to display his SIA licence. In essence the complainant was repeating his previous information request in a more comprehensive form, and was arguing that the passage of time should now alter the balance of the public interest in favour of disclosing the information requested.
7. SIA responded on 30 August 2011, refusing the request and relying on the exemptions in section 30(1) and 30(3) of FOIA. SIA said that the balance of the public interest lay in maintaining the exemptions.
8. Following internal review SIA wrote to the complainant on 28 October relying on the section 30(3) FOIA exemption. SIA said that the decision had been made in conjunction with its Intelligence and Compliance and Enforcement Teams who manage its investigations and enforcement operations.
9. SIA said that the details of successful enforcement operations and prosecutions of individuals and companies resulting from its internal investigations were reported on its website.
10. As regards the public interest, SIA said that it had considered the effect of the passage of time between the two information requests. SIA said however that any information that might be held for the purposes of investigation could still be required if the case were reopened in future or if the information were requested to support enforcement action by SIA itself or a partner agency or the police. SIA said that the balance of the public interest remained in favour of maintaining the exemption.

## **Scope of the case**

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11. On 5 December 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He said that 17 months had elapsed since he had provided intelligence to SIA and that the age of the information

requested was now such that, in his view, it would no longer have any prejudicial impact on SIA's investigation process.

12. The complainant told the Information Commissioner in his evidence that the police disclosed information about serious crimes. SIA matters were less serious in comparison so that he saw no need for secrecy or justification for the information requested to be withheld. He said that, as SIA did not normally disclose information about its investigations, he could not give SIA-based examples.
13. In evidence to the Information Commissioner SIA said that the possibility remained that SIA or another law enforcement partner agency could consider or take some future action against the individual concerned. SIA confirmed to the Information Commissioner that the time elapsed until the receipt of the second request did not make a material difference to the SIA view of this matter.
14. The Information Commissioner considered the application of the investigations and proceedings conducted by public authorities exemption (section 30 FOIA) and the balance of the public interest.

## Reasons for decision

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15. Section 30(1) of FOIA states that:

*"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-*

*(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-*

*(i) whether a person should be charged with an offence, or*

*(ii) whether a person charged with an offence is guilty of it...".*

Section 30(3) states that:

*"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)."*

16. Section 30(1)(a)(i) provides an exemption to disclosure for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person should be charged with an offence.

Section 30(1)(a)(ii) provides an exemption for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person charged with an offence is guilty of it. In order for the exemptions within section 30(1) to be applicable, any information must be held for a specific or particular investigation, and not for investigations in general.

17. SIA has power to prosecute under the terms of the Private Security Industry Act 2001. Accordingly the Information Commissioner is satisfied that SIA has the power to carry out investigations of the sort described in sections 30(1)(a)(i) and (ii) to establish whether an offence has occurred.

18. Section 30 is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2). SIA confirmed that it considers that the classes of information specified in section 30(1) would be relevant if it held any information falling within the scope of the request.

19. The Information Commissioner saw that SIA told the complainant:

*"The decision to issue this [neither confirm nor deny] response was made in conjunction with our Intelligence and Compliance and Enforcement Teams who manage our investigations and enforcement operations."*

20. The Information Commissioner is satisfied that any information SIA holds falling within the scope of the request will be held for the purposes of a specific investigation, which SIA has a duty to conduct, with a view to ascertaining whether a person should be charged with an offence or whether a person charged with an offence is guilty of it. The Information Commissioner is therefore of the view that the exemption at section 30 is engaged.

### **Public interest**

21. As the section 30(3) FOIA exemption is qualified, the Information Commissioner considered the balance of the public interest. In the preceding case the Information Commissioner decided that the balance of the public interest lay in maintaining the exemption.

***Public interest arguments in favour of maintaining the duty to confirm or deny whether the requested information is held***

22. The complainant argued that the police disclosed information about serious crimes and that consequently, for the less serious matters he was raising, there was no need for secrecy. He added that as SIA have a policy of not disclosing information about investigations it was not possible for him to give SIA examples.
23. He said that, if a SIA investigation showed that allegations of misconduct were unfounded, then disclosure of that information could not cause harm.

***Public interest arguments in favour of maintaining a 'neither confirm nor deny' response***

24. In this case, SIA said that the time elapsed between receipt of the intelligence from the complainant and his second information request had not been so great as to alter its position regarding disclosure of any relevant information it might hold regarding investigations that it was presently conducting or considering itself or in conjunction with its partner agencies. The possibility remained that SIA or a law enforcement partner agency could consider or be considering action against the individual concerned either now or in the future.
25. SIA added that in its view the release of information about investigations into the conduct of individual licence holders was outweighed by the harm that could be caused to an individual and his employer if the allegations of misconduct were unfounded. Information about successful prosecution was available to members of the public via its website. The Information Commissioner has seen that SIA publishes on its website details of its own completed prosecutions and that it supports prosecutions by the police and some other government agencies.
26. SIA said that its decision to neither confirm nor deny had been made in conjunction with the Intelligence and Compliance and Enforcement Teams which managed its investigations and enforcement operations.

***Balance of the public interest arguments***

27. The Information Commissioner considers that many of the public interest arguments in favour of maintaining a 'neither confirm nor deny' response expressed in his decision notice FS50371782 continue to apply.
28. He recognises that there is a public interest in encouraging members of the public to provide relevant intelligence to SIA and to receive

assurance that intelligence provided that may point to the existence of activity in breach of the legislation governing the private security industry is taken seriously by SIA. He considers that the publication by SIA of the outcomes of its successful prosecutions provides considerable reassurance.

29. The Information Commissioner notes from the SIA website that, in the face of apparent wrongdoing, SIA has a range of options for action against individuals and companies as alternatives to prosecution. These include SIA verbal warnings, SIA written warnings and improvement notices.
30. The Information Commissioner considers that, in many cases, the more specific the request, the lower the likelihood of the duty to disclose arising. In this case, the request is focussed on a particular incident for possible investigation, rather than investigations in general.
31. The Information Commissioner decided that SIA's assurances, offered to both the complainant and himself, that its relevant teams considered the intelligence it had received provided considerable assurance that the matter had been properly addressed by SIA.
32. Having considered the representations that both the complainant and SIA put to him, the Information Commissioner accepted the evidence of SIA that the passage of time has not yet been such as to overturn the balance of the public interest in this matter.
33. Having considered the opposing public interest factors, the Information Commissioner considers that the public interest in maintaining the exclusion from the duty to confirm or deny outweighs the public interest in confirming or denying whether information is held.
34. He has given particular weight to: the timing of the request in relation to the age of any information which might be held; the fact that any information that may be held would relate to a specific investigation; and the potential prejudice to any investigation which may have been ongoing, or recently closed at the time of the request or be in prospect by SIA or its partners in the reasonably foreseeable future; and to assurances by SIA that its relevant teams had considered the intelligence provided. He has therefore decided that SIA was correct to apply section 30(3).

## Right of appeal

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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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

**Signed** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
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**Wilmslow**  
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**SK9 5AF**