

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2015

Public Authority: West Midlands Fire Service
Address: 99 Vauxhall Road
Birmingham
B7 4HW

Decision (including any steps ordered)

1. The complainant requested a list of the exact locations of all fire hydrants and canal access hatches in the West Midlands Fire Service (WMFS) area. WMFS refused this request under the exemptions provided by sections 24(1) (national security) and 38(1) (endangerment to health and safety) of the FOIA.
2. The Commissioner's decision is that WMFS cited section 24(1) correctly in relation to locations of fire hydrants and so it was not obliged to disclose that information. However, in relation to locations of canal access hatches the conclusion of the Commissioner is that neither sections 24(1) nor 38(1) are engaged and so WMFS is now required to disclose that information.
3. The Commissioner requires WMFS to take the following steps to ensure compliance with the legislation.
 - Disclose the information recording the locations of canal access hatches.
4. WMFS must take these steps within 35 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 16 February 2015 the complainant wrote to WMFS and requested information in the following terms:

"Please can you supply me with a list of the locations of all the Fire Hydrants within your administrative area.

Please could you also include canal access hatches, if you still maintain these. If so, please indicate which is which, or provide two separate files.

I would like to know the exact location (longitude & latitude) if known, or if that is not held I would like the nearest street address."

6. WMFS responded on 11 March 2015. It refused to disclose the requested information and cited the exemption provided by section 24(1) (national security) of the FOIA.
7. The complainant responded on 11 March 2015 and requested an internal review. WMFS responded with the outcome of the review on 3 June 2015. The refusal under section 24(1) was upheld and WMFS also now cited the exemption provided by section 31(2) (prejudice to law enforcement) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 15 June 2015 to complain about the refusal of his information request. The complainant indicated at this stage that he did not agree with the reasoning given by WMFS for the refusal of his request and suggested that this was not consistent with disclosures made by other public authorities.
9. During the investigation of this case WMFS withdrew reliance on section 31(2) and instead cited section 38(1) (endangerment to health and safety).

Reasons for decision

Section 24

10. Section 24(1) provides an exemption from the duty to disclose recorded information where this is required for the purpose of safeguarding national security. There are two steps to consideration of this

exemption. First the exemption must be engaged due to a national security requirement. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

11. As to whether this exemption is engaged, the Commissioner's approach is that "required" as it is used in section 24(1) means reasonably necessary. The exemption will, therefore, be engaged if withholding the information from disclosure is reasonably necessary for the purposes of national security. This means that it is not sufficient for the requested information to relate to national security; there must be a clear basis for arguing that disclosure of it would have an adverse effect on national security.
12. The argument of WMFS concerned the information in question being used to carry out attacks on the water supply infrastructure. It believed that disclosing a full list of hydrants would assist in the planning of such an attack as this would show where there are access points to this infrastructure. The Commissioner accepts that an attack on the water infrastructure would be harmful to national security, so this argument does relate to the interests that section 24(1) is intended to protect.
13. The next step is to consider whether it is plausible that this information would be used in such a way. On this point it is not necessary for there to be evidence of a specific attack being planned, it is sufficient for it to be reasonable to expect that such an attack may be attempted.
14. The scenario that WMFS envisaged was an attempt by terrorists to poison the water supply. The Commissioner accepts that disclosure of the withheld information would assist in such an attack by listing access points to the water supply. The complainant would argue that the location of hydrants is already available, by dint of them being clearly visible, and so the risk identified by WMFS already exists independently from disclosure. The Commissioner accepts, however, that disclosure of a collated list of the precise location of every hydrant in the WMFS area would disclose into the public domain additional information than is available through hydrants being visible.
15. As to whether it is plausible that such an attack may take place, clearly there are individuals and groups seeking to carry out terrorist attacks on the UK. On the issue of whether they may seek to do so by poisoning the water supply, during the investigation of this case WMFS provided to the ICO an independently written history of attacks and attempted attacks on water supplies, showing that there have been a number of attempted attacks of this kind in the UK and elsewhere in recent history.

On the basis of this evidence, the Commissioner accepts that it is plausible that an attack of this kind could be attempted.

16. The complainant argued that similar information had been disclosed by other public authorities and that this was evidence that withholding the information was not necessary in this case. However, that similar information may have been disclosed at other times does not preclude the information being exempt in this case. If a convincing case is made for why the information must be withheld on national security grounds, the Commissioner will find that section 24(1) was cited correctly, notwithstanding any previous disclosures of similar information.
17. Having found that an attack on the water supply infrastructure would be in the domain of national security, that the information in question would assist in the planning of such an attack and that it is plausible that an attack of this kind could be attempted, the conclusion of the Commissioner is that it is reasonably necessary for the information in question to be withheld for the purpose of safeguarding national security.
18. In relation to canal access hatches, the Commissioner has reached a different conclusion. WMFS confirmed that it held information on the location of canal access hatches and stated that it was withheld for the same reasons as the information on fire hydrants. It is not clear, however, how that reasoning could apply in relation to canals.
19. As covered above, the reasoning of WMFS concerned an attack on the water supply infrastructure. Canals do not form part of that infrastructure and, furthermore, clearly the canal network is not comparable to the water supply infrastructure in terms of national importance, which means that it is not clear that an attack on the canal network would be a national security matter. For these reasons, the Commissioner concludes that section 24(1) is not engaged in relation to the location of canal access hatches.
20. Having found that the exemption is engaged in relation to fire hydrants, the next step is to consider the balance of the public interest. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of the exemption, as well as the specific factors that apply in relation to the requested information.
21. Covering first factors in favour of disclosure, the Commissioner has taken into account the public interest in openness that is presumed in the FOIA. In relation to any recorded information held by a public authority, the presumption should be in favour of disclosure. The Commissioner does not, however, believe that there is any weighty

public interest in disclosure of a list of the exact location of fire hydrants.

22. Turning to the public interest in the maintenance of the exemption, in any situation where section 24(1) is found to be engaged, the Commissioner must recognise the public interest inherent in this exemption. Safeguarding of national security is a matter of the most fundamental public interest; its weight can be matched only where there are also fundamental public interests in favour of disclosure of the information requested.
23. In this case, the Commissioner has recognised the public interest in disclosure in order to promote the openness and transparency of WMFS. However, he considers it clear that this does not approach the weight of the public interest in safeguarding national security. His conclusion is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so WMFS was not obliged to disclose the information requested by the complainant.

Section 38

24. WMFS cited the exemptions provided by sections 38(1)(a) and (b). These sections provide that information is exempt where its disclosure would, or would be likely to, endanger health or safety. Similarly to section 24(1), there are two stages to consideration of this exemption; first it must be engaged and, secondly, the balance of the public interests must be considered.
25. Having found that section 24(1) was not engaged in relation to the location of canal access hatches, it is necessary to consider whether section 38(1) applies in relation to that information. WMFS relied on the same reasoning as for section 24(1) when citing this exemption, meaning that, as above, it gave no separate reasoning as to the result of disclosure of locations of canal access hatches, separately from locations of fire hydrants.
26. Clearly the reasoning in relation to fire hydrants would be relevant to section 38(1); poisoning the water supply would be with the aim of endangering health. WMFS has given no reasoning, however, that relates specifically to canal access hatches. The conclusion of the Commissioner is that the exemption provided by section 38(1) is not engaged in relation to locations of canal access hatches and at paragraph 3 above WMFS is required to disclose this information.

Right of appeal

27. 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

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

28. 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.
29. 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
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