

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 February 2018

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

#### Decision (including any steps ordered)

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1. The complainant requested information on the cost of the investigation by the Serious Fraud Office (SFO) into manipulation of LIBOR. The SFO refused to disclose this information and cited the exemptions provided by the following sections of the FOIA:
  - 31(1)(a) (prejudice to the prevention or detection of crime)
  - 31(1)(b) (prejudice to the apprehension or prosecution of offenders)
  - 31(1)(c) (prejudice to the administration of justice)
2. The Commissioner's decision is that the SFO cited these exemptions correctly and so it was not obliged to disclose this information.

#### Request and response

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3. On 7 April 2017 the complainant wrote to the SFO and requested information in the following terms:

*"Can you please tell me under the FOI act the total cost to today's date of the SFO's investigation into Libor manipulation, initiated on 6 July 2012. Please, as far as possible, break down the costs, e.g. By separate investigation into certain characters- e.g. Tom Hayes - or type of cost - e.g. Internal, legal, consultancy."*

4. After a delay, the SFO responded substantively on 27 June 2017. It refused the request and cited the exemptions provided by the following sections of the FOIA:
  - 31(1)(a) (prejudice to the prevention or detection of crime)
  - 31(1)(b) (prejudice to the apprehension or prosecution of offenders)
  - 31(1)(c) (prejudice to the administration of justice)
5. The complainant responded on 16 July 2017 and requested an internal review. The SFO responded with the outcome of the review on 28 July 2017. The conclusion of this was that the refusal under the exemptions cited previously was upheld.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 3 August 2017 to complain about the refusal of his information request. The complainant indicated that he did not agree with the grounds given by the SFO for the refusal of his request.

### **Reasons for decision**

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#### **Section 31**

7. The SFO cited sections 31(1)(a), (b) and (c) of the FOIA. These sections provide exemptions where disclosure of the requested information would, or would be likely to, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice. Consideration of these exemptions involves two stages. First, the exemptions must be engaged as prejudice relevant to the matters mentioned in these sections would be at least likely to result through disclosure. Secondly, these exemptions are qualified by the public interest, which means that if the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure, the information must be disclosed.
8. The SFO has relied on the same reasoning for the citing of all of these exemptions and so they are covered jointly here. Covering first whether the exemptions are engaged, in order for the Commissioner to accept that prejudice would be likely to result, there must be a real and significant chance of prejudice occurring, rather than this being of remote likelihood. The question here is, therefore, whether disclosure of

the information in question would result in a real and significant chance of prejudice relevant to the exemptions cited by the SFO.

9. In summary, the reasoning of the SFO was that repeated disclosures of cost information relating to its ongoing LIBOR investigation would be likely to prejudice that investigation. The Commissioner accepts first of all that this reasoning is relevant to the matters mentioned in sections 31(1)(a), (b) and (c).
10. The next step is to consider whether this prejudice is a likely outcome of disclosure of the information requested by the complainant. The argument of the SFO relates to the cumulative effect of a number of disclosures. It stated that it had disclosed information about the costs of the LIBOR investigation on three occasions in 2016, but that it believed that a further disclosure would create a situation in which the combination of the information released in response to the several requests would be likely to be prejudicial to its investigation.
11. SFO argued that a number of disclosures of details of its expenditure on investigations would enable the development of a picture of activity within an investigation. This could be, for example, through a spike in expenditure indicating a period of intensive activity in an investigation. It was also concerned about the precedent effect of disclosure in this case; in other words, that disclosure in this case could make resisting disclosure in response to future similar requests more difficult.
12. The Commissioner accepts that there is a likelihood of individuals or groups attempting to use information disclosed by the SFO to undermine its investigations. She also notes the representations from the SFO that the LIBOR investigation remains ongoing and that the SFO has previously disclosed information about expenditure on this investigation, as reflected in its disclosure log<sup>1</sup>.
13. As to whether it is accurate to suggest that disclosure in this case would make it more difficult to resist disclosure in response to future requests on similar subject matter, the Commissioner notes that such arguments can be valid. As highlighted by the SFO, this is covered on paragraphs 21 to 23 of the Commissioner's guidance on section 31<sup>2</sup>.

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<sup>1</sup> <https://www.sfo.gov.uk/publications/corporate-information/freedom-of-information/>

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

14. The Commissioner's view is that the SFO's argument about release of expenditure on an investigation beyond a certain level enabling a picture to be developed about activities within that investigation is valid. She regards it as significant that this investigation is ongoing and was at the time of the request. The Commissioner also accepts that there are those who would seek to undermine SFO investigations.
15. Having previously released information about expenditure on its LIBOR investigation, the Commissioner accepts that it is reasonable for the SFO to consider the point at which further disclosure would be likely to prejudice its investigation. She has also taken into account the reasoning that disclosure in this case would make it more difficult to resist disclosure in response to similar requests in future.
16. Taking all these factors into account, the Commissioner accepts that there is a real and significant likelihood of disclosure leading to prejudice relevant to the matters mentioned in sections 31(1)(a), (b) and (c). Her conclusion is, therefore, that these exemptions are engaged.
17. Having found that the exemptions are engaged, the next step is to consider the balance of the public interests. In forming a conclusion on the balance of the public interests here, the Commissioner has taken into account the general public interest in the openness of the SFO, as well as specific factors that apply in this case.
18. Covering first factors in favour of disclosure, the LIBOR investigation is a matter of legitimate public interest. LIBOR provides an interest rate benchmark that impacts on trillions of transactions. The manipulation of LIBOR, in relation to which there have already been convictions and which the SFO continues to investigate, potentially had effects far beyond the City of London. The practices of banks also remains an issue of acute public interest following the 2008 banking crisis. The Commissioner considers that this background highlights a strong and legitimate public interest in disclosure of the requested information in order to enhance public knowledge and understanding of the investigation being carried out by the SFO.
19. However, the Commissioner notes that the SFO has shown a willingness to disclose information relating to its LIBOR investigation where it does not have concerns about such disclosure impacting ongoing investigations. This includes the disclosures mentioned above that are highlighted on its disclosure log and further information made available on its website<sup>3</sup>. The Commissioner's view is that these existing

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<sup>3</sup> <https://www.sfo.gov.uk/cases/libor-landing/>

disclosures mean that the public interest in the disclosure of information relating to the LIBOR investigation has already been partly satisfied.

20. Turning to factors in favour of maintenance of the exemptions, a key issue here is that the investigation remains ongoing. This was a key factor in finding that the exemptions were engaged and, having mentioned above the significance of LIBOR and the investigation into its manipulation, the strong public interest in avoiding disruption to that investigation must also be recognised. The Commissioner regards the public interest in avoiding prejudice to the ongoing LIBOR investigation to be a factor in favour of maintenance of the exemptions of very significant weight.
21. In conclusion, the Commissioner has recognised valid and weighty public interest in favour of disclosure of the requested information owing to the significance and profile of the LIBOR investigation. However, the Commissioner's view is that the investigation being ongoing tips the balance in favour of maintenance of the exemptions; the public interest in avoiding prejudice to the ongoing LIBOR investigation is the weightiest factor here. Her finding is that the public interest in the maintenance of the exemptions outweighs the public interest in disclosure and so the SFO was not obliged to disclose the requested information.

### **Other matters**

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22. The delay by the SFO in responding to the request has been recorded separately. This issue may be revisited should evidence from other cases suggest that this is necessary.

## Right of appeal

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23. 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>

24. 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.
25. 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** .....

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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