

## **Freedom of Information Act 2000 (Section 51)**

### **Information notice**

**Date:** 5 June 2023

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

#### **Section 51**

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Under section 51 of the Freedom of Information Act 2000 (FOIA), which is set out below, the Information Commissioner (the Commissioner) has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of FOIA.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in FOIA referred to as “an information notice”) requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

#### **Application under section 50**

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1. The Commissioner has received an application under section 50, reference IC-217969-Y2N6, for a decision whether a request for information made by the complainant to the Home Office on 13 September 2022, has been dealt with in accordance with the requirements of Part I of FOIA.

## Nature of complaint

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2. On 13 September 2022, the complainant made the following request for information under FOIA:

"A copy of all Memorandums of Understanding made between HM Coastguard and Border Force since 01/01/2020."
3. The Home Office responded on 12 October 2022. It stated that no Memorandums of Understanding ('MOU') had been made between the two parties since 1/1/2020.
4. The complainant requested an internal review on 2 December 2022, stating that she believed that a recent MOU did exist.
5. The Home Office provided the outcome of the internal review on 22 February 2023. It revised its position, confirming that it held a single MOU between the Maritime Coastguard Agency and the Home Office, which it refused to disclose, citing sections 31(1)(a) and (e) (Law enforcement) of FOIA.
6. On 23 February 2023 the complainant wrote to the Commissioner to complain about the response.
7. On 25 April 2023 the Commissioner wrote to the Home Office, raising various queries to assist with his investigation. He asked for its response by 25 May 2023. He explained that an Information Notice might be issued in the absence of a response.
8. To date, the Home Office's response remains outstanding.

## Information required

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9. In view of the matters described above the Commissioner hereby gives notice that, in the exercise of his powers under section 51 of FOIA, he requires that the Home Office shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
10. The Home Office is required to respond in full to the Commissioner's letter of 24 April 2023, which is reproduced below.

"If you maintain that the cited exceptions were correctly applied, **please send me a copy of the withheld/redacted information**, preferably by email and answer the questions set out below.

**Section 31(1)(a) & (e) – Law enforcement**

Disclosure would, or would be likely to, prejudice:

- (a) The prevention or detection of crime
- (e) The operation of the immigration controls

Please clearly explain why disclosure of the information would prejudice, or be likely to prejudice the function which the above sub-sections are designed to protect.

Please ensure that you provide evidence which demonstrates a clear link between disclosure of the information that has actually been requested and any prejudice which may occur.

**Likelihood of prejudice**

The ICO has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. The Tribunal has been clear that this phrase means that there are two possible limbs upon which a prejudice based exemption can be engaged; i.e. either prejudice 'would' occur or prejudice 'would be likely to' occur.

With regard to likely to prejudice, the Information Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk'.

With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge'.

Please confirm which threshold of likelihood the Home Office is relying on in this case, i.e. the lower threshold that disclosure 'would be likely' to have a prejudicial effect or the higher threshold that disclosure 'would' have a prejudicial effect.

**Public interest balancing test**

What public interest arguments in favour of disclosing the information were taken into account?

What public interest arguments in favour of maintaining the exemption were taken into account?

Please explain why you consider that, on balance, the public interest in maintaining the exemption outweighs that in disclosing the withheld information.

Please include details of any particular weighting exercise that has been carried out.

Please ensure that your submissions focus on the content of the information that has actually been withheld rather than simply being generic public interest arguments.”

### **Failure to comply**

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11. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA, and may be dealt with as a contempt of court.

## Right of appeal

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12. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@Justice.gov.uk](mailto:grc@Justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

13. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

**Signed .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**