



Home Office

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Mr John Reith
request-8555-0a0c3f02@whatdotheyknow.com

29 July 2010

Dear Mr Reith,

Freedom of Information Request – our ref: 12751

I am writing further to my correspondence of 10 February 2010, regarding your information request dated 4 September 2009. We are now in a position to provide you with a full reply to your request. I am very sorry for the considerable delay in responding.

I confirm that the Home Office holds information relevant to your request. I am pleased to be able to disclose some of the information requested to you. Due to the amount of information retrieved we cannot send it to you electronically. Please send your postal address to: info.access@homeoffice.gsi.gov.uk. We will supply you with all the disclosable information that the Home Office holds on receipt of your postal address.

After careful consideration we have decided that some of the information is exempt from disclosure by virtue of sections 23(1), 24(1), 31(1)(a)(c), 35(1)(b), 35(1)(c), 36(2)(c) and 40(2) of the Freedom of Information Act. These provide that information can be withheld where that information is supplied by or relates to the bodies dealing with security matters, would prejudice national security, the prevention and detection of crime, the administration of justice, Ministerial communications and the effective conduct of public affairs and personal information.

The exemptions at sections 24, 31, 35 and 36 are qualified exemptions and therefore require the conducting of a Public Interest Test (PIT) to balance the considerations favouring disclosure against those favouring non-disclosure. The relevant PIT can be found in the annex to this letter.

The exemptions at sections 23(1) and 40(2) are absolute exemptions and do not require consideration of the public interest test. Further information on these exemptions is in the annex also.

I should also point out that the exemptions at sections 23 and 24, and those at 35 and 36 cannot be applied to the same information. These exemptions have been applied to separate and distinct information and are wholly exclusive in their use.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference **12751**.

Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London SW1P 4DF
e-mail: info.access@homeoffice.gsi.gov.uk

During the independent review the department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Again, I would like to say sorry for the considerable delay in responding to you and I hope that this has not inconvenienced you unduly.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Fisher', written in a cursive style.

L Fisher
Information Access Team, Home Office

ANNEX – PUBLIC INTEREST TEST

Some of the exemptions in the Freedom of Information Act, referred to as ‘qualified exemptions’, are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information, or the considerations for and against the requirement to say whether the information requested is held or not. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.

The ‘public interest’ is not the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community as a whole if the information is released or not. The ‘right to know’ must be balanced against the need to enable effective government and to serve the best interests of the public.

The FoI Act is ‘applicant blind’. This means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to the UK.

Section 23 – Information directly or indirectly supplied by bodies listed at 23(3)

Section 23(1) states:

23(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

The bodies listed in subsection (3) include the Security Service, the Secret Intelligence Service, Government Communications Headquarters, the special forces, the SOCA and the National Criminal Intelligence Service amongst others.

Section 23 is an absolute exemption that does not require any consideration of the public interest test.

Section 24 – National Security

Section 24(1) (National security) applies to information in a small number of documents relevant to your request.

Considerations in favour of disclosing the information

There is a general public interest in increasing the public’s knowledge and understanding of how Government and law enforcement bodies such as the police operate. Releasing such information would demonstrate transparency and accountability on the part of Government and its agencies which in turn encourages public trust. It also provides opportunities to scrutinise Government and police actions or policies. The public also have an interest in understanding more about the removal and suspension of Mr Stalker, given that he was a senior public figure at that time.

Considerations in favour withholding the information

It is clearly in the public interest to prevent harm or avoid the risk of harm (both to individuals and the State more widely) that might result from disclosing material which is a matter of national security. If this information was disclosed it could risk compromising current police operational techniques and potentially individuals. It might also provide valuable information to other criminals.

We conclude that the balance of the public interest lies in withholding the information.

Section 31 – Law Enforcement

Sections 31(1)(a) (the prevention and detection of crime) and 31(1)(c) (the administration of justice) apply to information in a small number of documents relevant to your request.

Considerations in favour of disclosing the information

The arguments in favour of disclosure are similar to those under section 24 (1) (National security). Mr Stalker held a senior position at the time and the public have an interest in learning more about his suspension and removal from the Inquiry. The public also have an interest in being kept informed about the ways in which the police carry out their responsibilities. For example there is a general public interest in demonstrating the robustness with which law enforcement agencies conduct investigations which may go towards maintaining public confidence in law enforcement and the criminal justice system. Disclosure of this information would also demonstrate the accountability of those agencies and Government and ensure that their processes and procedures are as transparent as possible.

Considerations in favour withholding the information

Disclosure of information relating to the suspension and removal of Mr Stalker from office may prejudice any future proceedings (whether criminal, civil or otherwise) that might be linked to this case – even given the passage of time further proceedings cannot be ruled out. Releasing the information could undermine the possibility of the apprehension or prosecution of offenders and the administration of justice. The information relates to material gathered by the police in the course of an investigation. Disclosure may compromise future police investigations, either relating to a matter connected to this case, or more generally by revealing details about police strategies and tactics in seeking to prevent and detect crime, or operational policies and procedures. This type of information may provide valuable information to other criminals.

We conclude that the balance of the public interest lies in withholding the information.

Section 35 – Formulation of government policy

Sections 35(1)(b) (Ministerial communications) and 35(1)(c) (provision of advice by the Law Officers) apply to information in a small number of documents relevant to your request.

Considerations in favour of disclosing the information

There is a general public interest in disclosure, it ensures greater transparency and accountability on the part of Government and also increases the public's knowledge and understanding of how Government works. The public also have an interest in ensuring that decisions have been made on the basis of good quality legal advice. The decisions that Ministers make, particularly in deciding on how to respond to sensitive issues such as the suspension and removal of a senior police officer from office, and how they reach those decisions are of significant interest to the public.

Considerations in favour withholding the information

There is a strong public interest in the Government receiving frank and confidential advice from its principal legal adviser without fear that it will be disclosed. Similarly if Ministers feel inhibited from being frank and candid with one another because of the risk of subsequent

disclosure the quality of the debate lying behind collective decisions may be diminished. Collective responsibility seeks to ensure that decisions do not become personalised. This is described in the Ministerial code as follows:

Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees should be maintained.

We conclude that the balance of the public interest lies in withholding the information.

Section 36 – Prejudice to the effective conduct of public affairs

In relation to the exemption provided in section 36(2)(c) (prejudice to the conduct of public affairs), the qualified person has considered the application of section 36 and is of the opinion that this exemption applies to some of the information.

Considerations in favour of disclosing the information

There is a general public interest in being able to understand more about the deliberative and decision making processes of Government. The public will also want to be reassured that appropriate advice was sought to allow a decision to be reached based on the best advice and options available. The Stalker case has a very high profile in Northern Ireland and the public will have an interest in knowing that such sensitive issues are handled appropriately and at a sufficiently senior level. Release would also show how officials interact with each other and the range of advice and views provided.

Considerations in favour of withholding the information

It is in the public interest that there is a space within which Ministers and officials are able to discuss policy options freely and frankly. Discussions about the suspension and removal of Mr Stalker contain were, in some instances, a candid exchange of views. Knowing that such discussions or advice might be made public could inhibit officials from being free and frank in their advice or opinions. It might distort or restrain discussion of sensitive issues such as the Stalker case, which in turn might weaken the effectiveness of the advice to Ministers, or make it less likely that such information was not properly recorded in the future. Ministers and officials need to be able to think through all the implications of various policy options – in particular they need to be able to undertake rigorous and candid assessments of the risks associated with certain issues – such as the impact of a senior police officer being suspended and removed from duty when that officer has responsibility for a high profile investigation.

We conclude that the balance of the public interest lies in withholding the information. The application of section 36 has been approved by a qualified person.

Section 40 (2) – Personal information

Section 40 states:

40. (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

It is the general policy of the Home Office not to disclose, to a third party, personal information about another person. This is because the Home Office has obligations under the Data Protection Act and in law generally to protect this information. It has been concluded that some of the information you have requested is also exempt under section 40(2) of that Act. Section 40(2) of the Freedom of Information Act states that this disclosure would breach the Data Protection principles and therefore we cannot supply the information you have requested.

Section 40(2) is an absolute exemption that does not require any consideration of the public interest test.