



Steven Dickinson

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FOI/EIR	Section/Regulation	Exemptions	Issue	Mosaic arguments
		s2, Part II exemptions		
		(except s23, s32, s43)		
		reg 12, reg 13		

Line to take:

UPDATE: As part of the guidance review some of the content of this line to take is now covered in external guidance. The remainder of the line will be incorporated into guidance or caseworker advice notes in due course at which point this line will be withdrawn.

The Commissioner will consider arguments that prejudice may be caused by the combining of the requested information with information already in the public domain or known to a limited number of individuals. However, such arguments cannot be speculative and need to specifically explain (i) what information is (likely to be) already available and to whom, (ii) the likelihood of the various types of information being combined in the way suggested and (iii) why the combination of this specific information would or would be likely to cause any prejudice.

In deciding whether to disclose the currently requested information, the Commissioner may also take into account any evidence or convincing argument that the prejudice caused by the disclosure of this information would lead to the same type of information being disclosed in future which could be collated into some form of database and given that this would be prejudicial, the current request should be refused. In such cases the Commissioner will also need to consider the likelihood of (iv) a precedent for disclosure being set and (v) the existence of a person or group sufficiently organised and motivated enough to collate such a database.

For the purposes of s41 and s42, confidentiality will be permanently lost if the information has at any time entered the public domain, even if it does not remain there at the time of the request. See the s41 and s42 lines for a full understanding of these exemptions. **UPDATE:** In relation to s42, this point is now covered in the following external guidance – [The exemption for legal professional privilege \(section 42\)](#) NB There is also new guidance on regulation 12(5)(b) of the EIR: [The course of justice and inquiries exception \(regulation 12\(5\)\(b\)\)](#), but this particular point is covered more fully in the section 42 guidance.

Further Information:

Types of Arguments

(A) Combination of requested information with information already available at the time of the request

[UPDATE: this point is now covered in external guidance: [Information in the public domain](#)]

The term “mosaic argument” is often used to refer to the argument that whilst it may not be prejudicial to disclose the requested information in isolation, it would be prejudicial where the requested information can be combined with other information already in the public domain or already known to the requestor.

The term “jigsaw arguments” is sometimes used interchangeably but this term really covers a scenario whereby some information is already in the public domain or known to the requestor and it is the disclosure of the requested information which would complete the jigsaw and thus cause some form of prejudice, for example, by providing the one missing piece of information which would allow the new identity or location of a high profile criminal to be identified.

(B) Combination of requested information with information not available at the time of the request *[This point remains effective]*

The terms ‘mosaic’ or ‘jigsaw’ arguments (and sometimes the phrase ‘cumulative prejudice’) are also used to describe another scenario, namely, that whilst it may not be prejudicial to disclose the requested information in isolation, the disclosure of this information may encourage the same requestor or others to make requests for the same information to this or other authorities who would then find it difficult to resist the release of the same type of information which had been released in the past. In turn, this could lead to the disclosure of multiple pieces of information which could be compiled in order to build up a ‘database’ of specific activities and it is this ‘mosaic’ effect which the authority argues would be prejudicial. Accordingly, an authority may argue that the first piece of information requested should not be disclosed to avoid this chain of events which ultimately would result in a prejudice.

The Commissioner’s Approach

In relation to "mosaic" and "jigsaw" arguments, the Commissioner accepts that even if disclosure of the requested information in isolation is unlikely to cause prejudice, it may nonetheless be prejudicial when it is combined with other information already in the public domain. However, general arguments or simple speculation about the possibility of other information being available or speculating about its possible combination with the requested information will not carry much, if any, weight. However, the Commissioner will consider such arguments where the authority is able to explain and (also where possible) evidence:

- (i) What information is (likely to be) already available and to whom?

Note: We would usually expect such arguments to relate to the requested information being combined with information in the public domain.

However, there may also be cases where we would accept that prejudice would be likely to occur if the requested information were to be combined with information known to a limited number of people (i.e. a company's employees) or just the requestor. However, the number of people with access to the full set of information will probably also have an impact on the likelihood of the prejudice occurring (see LTT13), and it would therefore be advisable to get early signatory input on such cases.

- (ii) What is the likelihood of the various types of information being combined in the way suggested?

- (iii) Why the combination of this specific information would or would be likely to cause any prejudice?

[UPDATE: this point is now covered in external guidance: *Information in the public domain*. The remainder of the line (below) is not yet covered by guidance, and remains effective.]

In relation to arguments referring to the prejudice caused by the combination of requested information with similar information **if it were to be released in the future**, the Commissioner accepts that this is a logical argument but one which is likely to be based on a prediction of a chain of events occurring in the future, namely, that further requests will be made to the relevant public authorities, that those authorities will disclose the requested information and that the requestor and/or others will collect, combine and analyse the relevant information in order to build up a database of sorts.

The Commissioner's position is that he will be unlikely to accept such arguments where they are speculative or generalised. However, as each case is to be considered on its own circumstances, the Commissioner will consider what weight, if any, is to be given to such arguments where an authority provides clear and convincing submissions, supported by some evidence, that the risk of the suggested prejudice occurring is real and substantial such that it is justified in withholding of the first piece of information which would initiate this chain of events. In other words, the Commissioner will expect the authority to provide clear and convincing arguments in response to the same three questions set out above in relation to cases where mosaic or jigsaw arguments are raised. He will also expect the authority to provide convincing arguments in relation to a further two questions:

- (iv) How convincing is the argument that a precedent for disclosure, that would be difficult to resist for future requests, would be set?

- (v) What evidence is there that a person or group sufficiently organised and motivated enough to collate such a database exists?

Examples

In FS50122063 (December 2007) a request was made to HMRC for details of the quantity of drugs seized in Devon and Cornwall for the years 2001 – 2005. HMRC argued that similar requests for the same information could be made in future which would allow a matrix of the authority's results and deployment strategies for drug seizures for all UK counties which could then be used by criminals to circumvent frontier controls. HMRC argued (i) that there is considerable evidence to suggest that criminals are known to research HMRC's law enforcement capabilities and border controls, and referred to the Serious Organised Crime Agency's report entitled "UK Threat Assessment 2006/7", (ii) that drug smugglers are highly motivated to research this information given the large financial gains to be made from smuggling illicit goods and (iii) that there is press interest in such details as a number of papers have submitted requests for drug seizure information.

The Commissioner was persuaded by the above arguments that disclosure of the requested information would set a precedent which would encourage and enable others to obtain similar data for other locations; that it was likely that seizure statistics for numerous locations in the UK could be combined into a single comparative resource for publication and finally that the publication or availability of such information would, or would be likely to prejudice HMRC's ability to prevent and detect smugglers.

The Commissioner came to the same conclusion in relation to the same arguments raised in a request to HMRC for the items seized at Bristol airport and Avonmouth and Portbury docks for the years 2004 – 2006 (FS50142321 – December 2007).

Similarly, the Commissioner accepted such arguments in the case of FS50177654 (September 2009) in which a request was made for the number of offences detected by a single speed camera at a single site for one day. At paragraph 97 of the decision notice it was said "...the Commissioner has considered that while the single request of a single day's total might not provide sufficient data on which to estimate enforcement patterns, he must consider the request in context. The Commissioner is wary of a 'mosaic effect'. This is the process of creating a matrix of information that could build up to expose the pattern of enforcement at a site. Whilst this request is for one day it could lead to requests for a large number of different requests about other days that build together to indirectly expose the pattern of enforcement at the site. The Commissioner feels that the precedent argument would apply in this case.

98.the Commissioner is satisfied that this risk of creating a matrix of information is real and substantial especially given the websites on these issues and how strongly people feel about speed cameras".

In the case of FS50123912 (January 2009) the requestor asked for the total amount of money spent on and the number of informants registered with Northumbria Police for the five years preceding the request. The argument was made that disclosing the total amount of money spent on informants would set a precedent for disclosure of similar information about other forces which could be prejudicial if a nationwide picture of how much money is spent by all police forces nationally. The Commissioner confirmed that he would consider each case individually taking into account the arguments presented in relation to the specific information requested and although the three questions test approach as set out in this line was not used, it was said at paragraph 59:

"...it is not clear what specific prejudice would arise from being in a position to compare the sum spent on [informants] by different police forces. The public authority has suggested that disclosure of which forces spend the highest sums on [informants] would encourage criminals to target areas with lower [informant] expenditure. However, this suggestion does not appear to take into account that a decision as to where to commit a crime would be likely to be based on a range of factors. At least some of these factors, such as the location of the target of the crime, appear likely to be of more weight when choosing where to commit a crime than which force spends the lowest sum on [informants]".

Under the Commissioner's three stage questions test, this argument would have failed under the last point as the police had not explained why the combination of this specific information would or would be likely to cause the prejudice.

In March 2010, the Commissioner issued a decision notice in relation to a request for information from the BBC on the number of search warrants obtained by the BBC over a 10 year period in relation to its enforcement of the TV Licence. The notice found that the exemption was engaged and that the PIT favoured maintaining the exemption. In its judgement of 6 January 2011 (EA/2010/0087), the Tribunal said:

"The point [about disclosure undermining the uncertainty element which is integral to the BBC's enforcement strategy] is further highlighted by the BBC's assessment that if disclosure were to be ordered, it may influence the granting of future requests about other enforcement methods, decreasing the deterrent effect that uncertainty brings. We were referred to Hemsley (emphasis added by Tribunal on the following point) – "we are impressed by the argument as to 'setting a precedent'. Whilst every request must be dealt with on its merits, if this request were granted, it is not hard to envisage the difficulties faced by police authorities in dealing with future requests for such information" (paragraph 39).

Source	Details
	HMRC decision notice (18 December 2007)
	HMRC decision notice (19 December 2007)
Policy	Northumbria Police decision notice (January 2009)
	Richard Bowden/BBC (6 January 2011)

Related Lines to Take

[LTT13](#), [LTT92](#), [LTT221](#), [LTT222](#), [LTT224](#)



Related Documents

[FS50122063](#) (HMRC), [FS50142321](#) (HMRC), [FS50123912](#) (Northumbria Police), [EA/2010/0087](#) (Bowden),

Contact

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