



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 19 April 2006

Public Authority: Home Office

**Address: 2 Marsham Street
London
SW1P 4DF**

Summary Decision

The Information Commissioner's (the "Commissioner") decision in this matter is that the Home Office was entitled by virtue of section 38 and section 40 of the Freedom of Information Act ("the Act") to withhold all the information requested by the complainant. The Commissioner has decided that the Home Office has therefore dealt with the Complainant's request in accordance with Part 1 of the Freedom of Information Act 2000 ("the Act").

In view of the matters referred to above the Commissioner does not require any steps to be taken by the Home Office.

1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner

1.1 The Commissioner has received an application for a decision whether the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- the complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority

2. The Complaint

- 2.1 On 2 February 2005 the Complainant requested the following information from the Home Office in accordance with s.1 of the Act:

“The Home Office has asserted that as of 31 December 2003 there are 35 establishments in Scotland that are designated as places where licensed scientific procedures using animals may be conducted.”

Can I please have the names of the individuals / companies / academic institutions who hold those licences?”

- 2.2 The Home Office replied on the 15 March 2005. It said that it considered the information exempt from disclosure under sections 38 (health and safety) and 40 (personal information) of the Act.
- 2.3 On 22 April 2005, the complainant asked the Home Office for a review of its decision to withhold the information. On the 22 June 2005 the Home Office’s review upheld its original decision.
- 2.4 The complainant appealed to the Commissioner on the 23 June 2005.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

4. Review of the case

The complainant wrote to the Commissioner on 23 June 2005 expressing her dissatisfaction with the Home Office’s decision to withhold the requested information.

The complainant also complained about the delay by the Home Office in replying to her request. The Commissioner is satisfied the Home Office did reply within the timescale specified by the Act. The complainant made her request for information on the 2 February 2005. Although the Home Office did not provide the complainant with its refusal notice until 15 March 2005 it explained in an e-mail to the complainant dated 1 March 2005 why it did not have to respond within the 20 working days provided by the Act. This is because s.17 of the Act states that where a public authority is relying on a qualified exemption which requires a consideration of the public interest test, the time to reply can be extended by such time as is reasonable in the circumstances. The Commissioner is satisfied that it did reply within a reasonable period of time.

The Commissioner's investigation has therefore focussed on whether the Home Office correctly applied the exemptions cited in 2.3 above.

The Home Office explained that the Animal (Scientific Procedures) Act 1986 ("the 1986 Act") makes provision for the protection of animals used for experimental or other scientific procedures which may have the effect of causing pain, suffering, distress or lasting harm. Section 24(1) of this Act states that:

"A person is guilty of an offence if otherwise than for the purpose of discharging his functions under this Act he discloses any information which has been obtained by him in the exercise of those functions and which he knows or has reasonable grounds for believing to have been given in confidence."

It has been a long standing Home Office policy not to disclose the names of licensees and other individuals registered under the 1986 Act. This is based on consideration of public safety and its interpretation of s.24 of the 1986 Act. The Home Office therefore advise that all licence holders work in the expectation that their identities will remain confidential.

The 1986 Act requires that before a project licence is issued the Secretary of State must weigh the benefits to humans, other animals or the environment against the costs to the animals involved. The 1986 Act has a three level licensing system which consists of:

- Personal – allowing individuals to carry out the procedures
- Project Licences - authorising the programme of work
- Certificate of Designation – designating the place at which the work may be carried out.

The Home Office has interpreted the complainant's request as covering the holders of all three types of licence, and the Commissioner accepts this interpretation.

5. The Commissioner's Decision

Section 38 (Health and Safety)

The Home Office invoked Section 38 (1) (a) and (b) of the Act as grounds for withholding the information. This states that:

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual”

The Commissioner has decided the requested information does fall within the scope of the exemption provided by section 38. There is clear evidence that organisations and individuals involved in animal research have been targeted and their health and safety put at risk by militant anti-vivisection groups. The Commissioner is satisfied that disclosure of information revealing the location of laboratories at which animal experimentation takes place, and the identities of individuals holding licences to carry out experimentation, would or would be likely to endanger the health and safety of individuals.

The public interest test – Endangerment to the physical or mental health or safety of any individual

Section 38 is subject to a public interest test.

Public Interest arguments in favour of disclosure are:

1. Greater openness and transparency about the regulation and use of animals in scientific procedures may help to increase public understanding about why animal are used in scientific research. It would allow the public to assess whether the scale of animal experimentation is proportionate to any resultant benefit.
2. Individuals involved in animal research should be accountable for their actions. If people are better informed about animal research, support for extremists' campaigns could be reduced.
3. The public has a right to know to whom licenses for animal procedures have been granted. An investor or student may be strongly opposed to animal research. Knowing whether or not animal research is carried out at a particular institution would allow prospective investors, students and others to decide whether to become involved with that institution. It would also allow consumer boycotts of companies involved in animal experimentation to be focussed effectively.

4. The complainant argues there are probably only around 10 activists across the UK who are prepared to adopt direct action against individuals and institutions involved in animal research. A high proportion of these activists are apparently in prison. Since there are hundreds of facilities, employing tens of thousands of people, it seems unlikely that up to 10 people could cause fear, alarm or physical harm to the industry in general. However a single activist, or a small group of activists, could cause harm to particular individuals or institutions.
5. Calls for more openness are now more persuasive given that the police have new powers and new legislation which make it easier to apprehend and punish animal rights extremists. These powers, and the introduction of a police team dedicated to combating domestic extremism (National Extremism Tactical Co-ordinating Unit - NETCU), should reassure scientists and their employers.

The Home Office argues that the public interest is best served by withholding the information. It justifies this with the following arguments:

1. The key issue of public interest is whether the work licensed under the Act is justified, and satisfies the requirements of the 1986 Act, not who is licensed to conduct the work. Whilst it accepts there is a limited public interest in who conducts the work, so that it can be demonstrated that these individuals and institutions are suitable, the legislation and licensing regime in effect serves this public interest.
2. The activities of a small number of animal rights extremists make it necessary to protect establishments and individuals licensed under the 1986 Act. This protection extends to their families and others associated with them, from potential harassment and harm. Identifying places and people not already known to be associated with animal research will increase the risk of them being subjected to violence and intimidation by the animal rights activists. Even if the risk to any individual is low, the impact would be high. It is not in the public interest to subject individuals to this risk. It therefore argues that the need to protect establishments and individuals from harm outweighs the public interest in disclosure of the information requested.
3. S.24 (1) of the 1986 Act, which is quoted in the Commissioner's review of the case above, outlines the circumstances in which the disclosure of certain information may lead to the person disclosing that information committing an offence under the

1986 Act. S.24 (1) can therefore be seen as reflecting the will of Parliament and therefore the public interest.

4. Although there is a need for more open and better informed debate about the use of animals in scientific procedures, this cannot be allowed to put individuals at risk of harm. By disclosing anonymised information about projects licensed under the 1986 Act on the Home Office website the public interest in allowing greater public scrutiny of licensing procedures is satisfied. These abstracts of projects also help to further the understanding as to why animals are used in scientific research and also assist in encouraging public debate. It is not necessary to disclose the names of those involved in this research in order to further the public's understanding of the issues involved or to encourage public debate. The decision of individuals working in the scientific community to engage in open discussion is a matter of individual choice. Exercising that choice should not be forced upon individuals in circumstances which may jeopardise the safety of themselves or family members.
5. The public interest in transparency is further met by the Statistics of Scientific Procedures on Living Animals produced annually by the Home Office. These detail the numbers of procedures carried out on animals each year, the purposes for which they are carried out and the number and species of animals involved as well as the number of establishments licensed in each of the seven categories, including higher education. This is intended in part to increase public understanding of the scale and class of establishments undertaking animal research.
6. There is a further public interest in ensuring that the work carried out at these institutions can be conducted effectively. By exposing individuals working in this area to greater risk it is likely that fewer people will be prepared to work in this field and this important work will not be conducted. This would be detrimental to the public interest.
7. Disclosure of licensing information would throw little, if any, light on the validity or otherwise of ethical policies publicly adopted by certain commercial organisations. This is because the vast majority of commercial companies commissioning animal use do not do it in house but sub-contract it to contract research organisations. The Home Office does not hold these client lists of contract research organisations.

The Commissioner has considered the competing public interest arguments and has concluded that in all the circumstances of this case,

the public interest in maintaining the section 38 exemption outweighs the public interest in disclosure. His reasons for reaching this conclusion are explained below.

The competing public interest arguments in relation to Section 38:

The Commissioner acknowledges issues surrounding the use of animals in research are highly emotive and controversial. It is a matter that many members of the public have strong feelings about.

It is not the Commissioner's role to take sides in this debate. Instead he has to consider whether the potential risk to the health and safety of any individual that may result from the release of the requested information is such that the public interest in maintaining the exemption outweighs the public interest in disclosure.

He recognises that the disclosure of this information may help to promote openness and transparency and therefore facilitate debate about animal testing. He also recognises that disclosing this information may ultimately undermine support for groups that oppose animal research by illegal means. This is because disclosure may allow a more balanced debate to take place.

However, the Commissioner believes that the increased likelihood of risk to the health and safety of any individual is, of itself, a powerful public interest argument against disclosure. There is evidence that individuals working in animal research face a real risk to their health and safety. It is therefore difficult to envisage public interest arguments so strong that they would justify the disclosure of information whose release would, or would be likely, to endanger any individual.

The Commissioner is also persuaded by the Home Office's argument that the information it already releases is sufficient to facilitate public debate of the pros and cons of animal experimentation.

The Commissioner's decision is, therefore, that the public interest lies in maintaining this exemption.

Section 40 (personal data)

The Home Office also invoked section 40(3) (a) (i) of the Act as a basis for withholding the identities of personal licence holders. This is an absolute exemption and as such does not require an assessment of the public interest.

Section 40(2) of the Act states that:

“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 second condition below is satisfied.”*

Section 40 (3) states:

The first condition is:

- (a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise 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).....”*

The Commissioner accepts that information which identifies individuals holding personal licences does constitute personal data of which those individuals are the data subjects. Personal data is defined as:

- “data which relate to a living individual who can be identified-*
 - (a) from those data, or*
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller....”*

The Home Office argues that disclosure would breach the first data protection principle. Schedule 1 Part 1 of the Data Protection Act 1998 (DPA) states the first principle as:

- “Personal data shall be processed fairly and lawfully, and, in particular, shall not be processed unless-*
 - (a) at least one of the conditions in Schedule 2 is met*
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 2 is also met”*

The Commissioner accepts that the health and safety of individuals working in animal research may be put at risk by the disclosure of some of this information. These risks have been identified in the context of the s.38 exemption and apply equally to s.40. The Commissioner also accepts that individuals working in lawful, licensed animal research have a legitimate and reasonable expectation that their identities will not be disclosed.

The Commissioner is therefore satisfied that disclosure of information which identifies personal licence holders would be unfair and would contravene the Data Protection Act 1998. He has therefore decided

s.40 provides a basis for exempting from disclosure information that identifies individuals.

6. Action Required

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the public authority.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 19th day of April 2006

Signed:

Richard Thomas

Information Commissioner
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