

Decision Notice



Decision 012/2014 Mr Rob Edwards and the Scottish Ministers

Location and quantities of potassium iodate tablets in Scotland

Reference No: 201302593

Decision Date: 30 January 2014

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

On 10 June 2013, Mr Edwards asked the Scottish Ministers (the Ministers) for the location and quantities of potassium iodate tablets in Scotland. The Ministers withheld the information on the basis that it was exempt from disclosure under section 31 of FOISA (National security and defence).

Following an investigation, the Commissioner was satisfied that the Ministers were entitled to withhold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 31(1) (National security and defence)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. The request in this case concerns potassium iodate tablets. These tablets are used to prevent people who have been exposed to radiation from contracting thyroid cancers. The tablets are used to protect against the accumulation of radioactive iodine in the thyroid.
2. On 10 June 2013, Mr Edwards emailed the Ministers to ask for information about potassium iodate tablets held at strategic locations across Scotland to respond to potential incidents. Mr Edwards asked the Ministers to say exactly where the tablets are stored, and in what numbers. He believed it was in the public interest for the locations and numbers to be known so that people could understand the arrangements made for their protection.
3. The Ministers responded on 8 July 2013. The Ministers informed Mr Edwards that the information he had requested was exempt from disclosure in terms of section 31(1) and section 31(4)(a) of FOISA. The Ministers considered that disclosure of the details requested by Mr Edwards could compromise national security and the defence of the British Isles.



4. On 8 July 2013, Mr Edwards emailed the Ministers requesting a review of their decision. Mr Edwards queried whether it was really in the public interest to refuse to disclose the information he had requested.
5. The Ministers notified Mr Edwards of the outcome of their review on 30 July 2013. The Ministers upheld their original decision without modification.
6. On 4 November 2013, Mr Edwards wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Edwards had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

8. On 5 November 2013, the Ministers were notified in writing that an application had been received from Mr Edwards and were asked to provide the Commissioner with the information withheld from him. The case was then allocated to an investigating officer.
9. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested.
10. The Ministers responded by providing submissions on why they considered the information to be exempt from disclosure in terms of section 31(1) and section 31(4)(a) of FOISA.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Edwards and the Ministers. She is satisfied that no matter of relevance has been overlooked.



Section 31(1) – National security and defence

12. Section 31(1) of FOISA provides that information is exempt information if exemption from section 1(1) (i.e. the right to request information from a Scottish public authority) is required for the purpose of safeguarding national security.
13. The expression "national security" is not defined in FOISA. The Commissioner considers that the phrase covers matters such as defence of the realm; the prosecution of war; the disposition of the armed forces; nuclear weapons; security and intelligence services, and potential threats to the economic wellbeing of the UK; including terrorism, espionage and subversion.
14. It should be noted that section 31(1) of FOISA specifies that information is exempt from disclosure if exemption is required *for the purposes of safeguarding* national security, a condition which has a narrower scope than simply information which simply *relates* to national security. (See the Commissioner's briefing on section 31¹.)
15. The Ministers explained that the stockpile of tablets was developed on a UK basis. They argued that to disclose the information would reveal the capability that the UK possesses to respond to certain types of attack. In their view, such intelligence about the level of response that could be provided would be greatly beneficial to terrorist organisations or foreign powers who would know how to harm Scotland and the UK most effectively and what levels of threat and weapons are needed to overcome the UK's ability to respond. The Ministers noted that the threat level for this type of attack in the UK is assessed currently as "substantial".
16. The Ministers also argued that disclosure of the locations would make the storage facilities potential targets for an attack or liable to theft. It would also indicate where the country was geographically weakest (furthest from the storage locations) and potentially where an attack would be most effective. The Ministers stated that, to maintain security, arrangements would have to be put in place to relocate the stockpile to an alternative specialist location if they had to disclose the information.
17. Additionally, the Ministers stated that, as the pharmaceutical counter-measures is a UK stockpile, they had sought the views of the Department of Health, the Cabinet Office and the Ministry of Defence, all of whom have an interest in the management and maintenance of the stockpile. The Ministers noted that all of these partners were supportive of the approach that the Ministers had adopted. The Ministers submitted that disclosure of details about pharmaceutical countermeasures held in Scotland could have implications for the UK stockpile as a whole in that any information disclosed could be used to calculate overall UK capability.
18. The Commissioner has considered carefully the Ministers' submissions. She finds the Ministers' arguments persuasive and is satisfied that the information under consideration is highly sensitive and that exemption from section 1(1) is required for the purpose of

¹ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=2662&SID=121>



safeguarding national security. The Commissioner agrees with the Ministers that disclosure of the information would reveal information about Scotland's capability to respond to specific types of attack and provide intelligence on the resources which a hostile party would require to overcome Scotland's ability to respond.

19. As the Commissioner is satisfied that the information is exempt under section 31(1), she will now go on to consider the public interest test set down in section 2(1)(b) of FOISA.

The public interest test

20. The Ministers stated that the purpose of the pharmaceutical countermeasures is to give Scotland and the UK the capability to provide a timely medical response to an incident and thereby protect the public from harm. In their view, any disclosure of the details of the countermeasures would have a potentially damaging impact on the population if an attack was targeted appropriately due to the disclosed information.
21. The Ministers also argued that there was a strong public interest in maintaining public safety by avoiding putting the stockpile of medicines at risk and ensuring the public gets timely and appropriate treatment in the event of an attack.
22. The Ministers also stated that this is a UK stockpile and, in the event of an attack where it was considered that greater access to the tablets was necessary, Scotland would have the support of the rest of the UK and access to stockpiles elsewhere if required. The Ministers considered that making people aware of the stockpile locations may have a converse effect of causing unwarranted levels of concern amongst some people that they could be more at risk than others due to their home being further away from a stockpile.
23. Additionally, the Ministers argued that any public interest in providing reassurance to the public has been met as Mr Edwards and others are aware that a stockpile of appropriate medicines, including potassium iodate, is in place as part of the arrangements for public protection.
24. In his application to the Commissioner, Mr Edwards noted that EDF Energy, which runs the nuclear power stations at Torness and Hunterston, had released detailed information on the number of tablets it holds, where it holds them and how they are distributed. He also stated that some people suspected that details of the stockpiles held in Scotland were being withheld because they would be seen by the public as inadequate.
25. The Commissioner has balanced the Ministers' submissions against those of Mr Edwards and the general public interest in making the information available. The Commissioner accepts there is a public interest in ensuring that public safety is maintained and that disclosure of the information in this case could put the stockpile of medicines, and hence access to them, at risk, contrary to public safety.



26. The Commissioner notes Mr Edwards' comment regarding the proactive disclosure of similar information by EDF Energy. The Commissioner considers the circumstances in which that information was disclosed (i.e. in the context of a limited geographical area around two nuclear power stations) to be very different from the information under consideration in this case. Here, the information concerns access to medicines held for the whole of Scotland's population (in a UK context) in response to any potential radiological or nuclear incident.
27. In conclusion, she considers that there is an overwhelming public interest in not disclosing this information and that, accordingly, the public interest in maintaining the exemption outweighs that in disclosure of the information.
28. Consequently, she accepts that the Ministers were entitled to withhold the information sought by Mr Edwards under section 31(1) of FOISA.
29. Having reached this conclusion, the Commissioner is not required to consider the application of section 31(4)(a) of FOISA which the Ministers also applied to the withheld information.

DECISION

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Edwards.

Appeal

Should either Mr Edwards or the Scottish Ministers wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Rosemary Agnew
Scottish Information Commissioner
30 January 2014



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

31 National security and defence

- (1) Information is exempt information if exemption from section 1(1) is required for the purpose of safeguarding national security.

...