

Message

From: Kett, Rhiannon [GRO]
Sent: 07/10/2014 10:24:40
To: Patrick Bourke [GRO]
CC: Parsons, Andrew [GRO]; Belinda Crowe [GRO]
Subject: Legally privileged: FOIA Request - BBC leaked report - section 31 [BD-4A.FID20472253]

Patrick

Andy and I have discussed the potential application of s.31 and are both struggling to satisfy in our own minds the requirement that disclosure would, or would be likely to, **prejudice** one or more of the specified limbs.

In respect of s.31(1)(a) – does the report actually contain the level of detail that could realistically be used to commission a crime or exploit the system in some way?

I have also considered the possibility of relying upon s.31(1)(g) by virtue of s.31(2)(a) and/or (b). The fact that Post Office is unable or unwilling to pursue, for example, criminal proceedings arising out of the Second Sight report findings, does not preclude reliance upon these exemptions, which are based upon 'ascertaining' whether an offence or improper conduct has occurred (including as a matter of historical fact). Within this context it may be possible to argue 'prejudice' in the wider sense of Post Office's ability to conduct such investigations/reviews. However given the generic nature of the Second Sight report, rather than case-specific details, this argument is fairly weak.

Even if the risk of prejudice is established, Post Office will of course still need to consider the public interest test.

I hope that this is helpful. Happy to discuss further.

Rhiannon Kett

Managing Associate

for and on behalf of Bond Dickinson LLP

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From: Patrick Bourke [GRO]
Sent: 07 October 2014 10:15
To: Kett, Rhiannon
Cc: Parsons, Andrew
Subject: RE: FOIA Request

MoJ guidance here:

<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-exemption-s31.pdf>

From: Patrick Bourke
Sent: 07 October 2014 10:14
To: Kett, Rhiannon
Cc: 'Parsons, Andrew'; Belinda Crowe
Subject: FOIA Request

Hi Rhiannon

Fujitsu have come back to us to say that disclose would NOT prejudice their commercial interests.

There are still grounds for the use of s43(2) in respect of POL's commercial interests but I wanted to take your view about whether S 31 (and specifically 31 1 a) could also apply. The point here is that the document reveals weaknesses in our internal systems which are capable of pointing others, perhaps even in the network, to exploiting them. We would then be withholding the information in part to prevent crime by protecting the integrity of our network systems.

Quick thoughts ?

Thanks

Patrick

Patrick Bourke

GRO

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