

**Reference: 2024-016**

Thank you for your email in which you requested the following information under the Freedom of Information Act 2000 (FOIA):

**We understand from reporting in the media that in June/July 2023 the SFO contracted Herd Consulting to carry out a root cause analysis of the reasons for the collapse of the proceedings in R v James Jardine, Mark Preston and Richard Morris (“the G4S proceedings”). We further understand from the public tendering documentation that the contract was due to conclude by today, 12 February 2024. Given the potential significance of the findings of the root cause analysis to the ongoing litigation in respect of liability for costs in respect of the G4S proceedings, please would you confirm whether Herd Consulting have now reported to the SFO (or if not, when they are expected to report), and if (and when) the SFO intends to publish the report?**

**If the report is not due to be published within the next 20 working days, we request that you disclose a copy to us. Should it be necessary to do so, please treat this as a request pursuant to the Freedom of Information Act 2000:**

- 1. The date Herd Consulting provided their root cause analysis report to the SFO, or if they have not yet reported, the date by which they have been required to report; and**
- 2. A copy of the Herd Consulting root cause analysis report (including any annexes, appendixes or enclosures etc). If a final copy of the report does not yet exist, please treat this as a request for the most recent draft or interim copy in the possession of the SFO.**

**Response**

The SFO holds this information. However, it is exempt from release under sections 30(2), 31, and 40(2) of the FOIA 2000.

This information is exempt by virtue of section 30(2), which provides that:

- (2) Information held by a public authority is exempt information if—
- (a) it was obtained or recorded by the authority for the purposes of its functions relating to—
    - (i) investigations falling within subsection (1)(a) or (b),
    - (ii) criminal proceedings which the authority has power to conduct,
    - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
  - (b) it relates to the obtaining of information from confidential sources.

**How the exemption is engaged**

The SFO obtained the information in relation to our functions as an investigative body. The information was obtained by us in our capacity as an investigative authority, and if we were to disclose the requested material, it would reveal details of our functions in relation to our investigations and proceedings. For this reason, the information is exempt from release pursuant to section 30(2)(a) of the FOIA.

The requested information is also exempt by virtue of Section 31, which provides that:

*Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

- (a) the prevention or detection of crime,*
- (b) the apprehension or prosecution of offenders,*
- (c) the administration of justice*

**How the exemption is engaged**

As a law enforcement agency, the SFO holds highly sensitive information which is of interest to others, including those we investigate. Releasing detailed information about the SFO’s investigation processes could therefore compromise our ability to protect SFO investigative material and information systems and

consequently limit our ability to investigate and prosecute fraud, bribery, and corruption, thereby prejudicing the interests at (a) (b) and (c) above.

#### Public interest test

Sections 30(2) and 31(a)-(c) are qualified exemptions and require consideration of whether, in all the circumstances of the case, the public interest in exempting this data outweighs the public interest in disclosing it. More information about exemptions in general and the public interest test is available on the ICO's website at [www.ico.org.uk](http://www.ico.org.uk).

It is recognised that there is a general public interest in publicising information about the SFO, so that the public knows that serious fraud, bribery, and corruption are being investigated and prosecuted effectively, and so that the public can be reassured about the general conduct of our organisation and how public money is spent.

However, having considered the public interest in releasing this information, we consider that the stronger interest lies in maintaining these exemptions of the FOIA. It is essential that the SFO safeguard against the risk that information regarding our investigative and procedural systems could pose if revealed to the general public, thereby compromising the confidentiality of the SFO at pre-investigation, investigation, prosecution stages and beyond by releasing sensitive information. Given the highly sensitive nature of the information requested and the risks which releasing sensitive information about our processes poses, we deem the duty to safeguard against this risk as superseding the public interest.

Having considered the opposing arguments, I believe that the stronger public interest lies in exempting the information from release.

The requested information is also exempt by virtue of section 40(2), which provides that:

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

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

*(b) the first, second or third condition below is satisfied.*

*(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—*

*(a) would contravene any of the data protection principles, or*

*(b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.*

Section 40 of FOIA 2000 provides an exemption from the right to information that is personal data as defined in the Data Protection Act 2018 (DPA). Personal data which is not the personal data of the requester (i.e. third-party personal data) should not be disclosed if this would contravene the data protection principles. This would constitute a breach of the first data protection principle outlined in the General Data Protection Regulation (GDPR), which states that *"personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"*.

Your request contains personal data as defined by the DPA. Release of personal data of any individual/s (the data subjects) is exempt under s.40(3A) as it would breach the data protection principles.

Section 40 of the FOIA is an absolute exemption and we are therefore not required to consider the public interest in releasing the information requested.