

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 April 2013

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the blocking of URLs that contain terrorist-related material. The Home Office confirmed that this information was held, but refused to disclose it citing the exemption provided by section 24(1) (national security).
2. The Commissioner's decision is that the Home Office cited this exemption correctly and so it is not required to disclose this information.

#### Request and response

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3. On 13 November 2010, the complainant wrote to the Home Office and requested information in the following terms:

*"What liability would be faced by the Home Office or filtering firms in relation to harm caused by wrongful inclusion of a site on this list? Please furnish copies of any documentation relating to same."*

4. On 10 January 2011 the Home Office responded and refused to either confirm or deny whether it held information falling within the scope of this request. In connection with this refusal the Home Office relied on the exemption provided by section 41(2) (information provided in confidence) of the FOIA.
5. The complainant later contacted the Commissioner in connection with this refusal. On 20 February 2012 the Commissioner issued a decision notice finding that section 41(2) was not engaged and requiring the

Home Office to respond with confirmation or denial as to whether this information was held.

6. On 19 March 2012 the Home Office responded confirming that this information was held, but refusing to disclose it under the exemptions provided by sections 41(1) (information provided in confidence) and 43(2) (prejudice to commercial interests) of the FOIA.
7. The complainant responded on 20 March 2012 and requested an internal review. After a very lengthy delay and only following the intervention of the Commissioner, the Home Office responded with the outcome of the internal review on 13 December 2012. The outcome of this was that the refusal to disclose was upheld, but the grounds given for this were amended; the Home Office withdrew reliance on section 41(1), but now introduced the exemption provided by section 24(1) (national security).

### **Scope of the case**

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8. The complainant contacted the Commissioner on 17 October 2012 to complain about the delay in the completion of the internal review. The complainant was contacted by the Commissioner's office on 6 December 2012 and advised that, in view of the grossly excessive delay in the completion of the internal review, an investigation into the exemptions that were cited would be commenced at that stage without waiting for the completion of the review. The Commissioner comments further on the internal review delay in the '*Other matters*' section below.
9. The complainant was asked to respond confirming whether he did wish for an investigation into the exemptions cited to be commenced. The complainant responded on 6 December 2012 and confirmed that he did agree with this course of action.
10. The Home Office was contacted at that stage and advised that, in view of the delay, the case was being progressed without waiting for the outcome of the review. The Home Office was advised that it could continue to progress the review, but that this case would be progressed regardless.
11. The Home Office subsequently advised the Commissioner's office that it was withdrawing reliance on section 41(1) and would be introducing section 24(1). This notice therefore concerns whether sections 24(1) and 43(2) were cited correctly.
12. When requesting an internal review, the complainant had questioned whether the Home Office had considered the scope of the request correctly. The view of the complainant was that the Home Office had

read the request incorrectly and this had resulted in an artificial narrowing of the scope of this request.

13. In the internal review response the Home Office confirmed that it had considered the full scope of the complainant's request. Having viewed the information in question, the Commissioner is of the view that the Home Office did read the scope of the request correctly.

## **Reasons for decision**

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### **Section 24**

14. Section 24(1) provides an exemption from the duty to disclose information where this is required for the purpose of safeguarding national security. Consideration of this exemption is a two-stage process; first the exemption must be engaged as a result of it being necessary for national security purposes to withhold the information in question from disclosure. Secondly, this exemption is qualified by the public interest, meaning that the information must be disclosed unless the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
15. Covering first whether the exemption is engaged, the argument of the Home Office concerns its future ability to secure the cooperation of third party organisations in its efforts to combat terrorism. In relation to the initiative that the request refers to, the Home Office has stated that it did not compel third parties to participate, rather it used '*persuasion and goodwill*' to secure participation. Its argument is that its ability to secure voluntary cooperation in this way would be harmed through the disclosure of the information in question.
16. The Commissioner's view is that the specific content of the information is not suggestive that disclosure would be particularly damaging. Whilst it is not possible to go into detail here about the content of this information, this is not of a nature that would generally be considered sensitive or controversial. However, the argument of the Home Office here does not rely on the sensitivity of the information, instead it concerns the impact that disclosure would have on perceptions about whether participation in a Home Office initiative to reduce terrorism would remain confidential.
17. The Home Office has also explained that participation in the initiative in question was somewhat controversial, and that the third parties involved participated on the basis that their contribution would be confidential. According to the argument of the Home Office, third parties may view disclosure in this case as evidence that they could not be confident that

details of their cooperation in other anti-terrorist initiatives would remain confidential.

18. The Commissioner notes first that the argument advanced by the Home Office is relevant to section 24. It concerns its efforts to combat terrorism, so clearly this argument relates to national security. Secondly, the Commissioner accepts that it is likely to be the case that securing the voluntary cooperation of third parties in these efforts relies heavily on these third parties having confidence that their cooperation will remain confidential.
19. Thirdly, the Commissioner notes that anti-terrorist work is one of the key responsibilities of the Home Office and that its efforts in this area are likely to be ongoing at any given time. Any harm that would be likely to result through disclosure would impact upon these ongoing efforts, rather than having an impact at some theoretical and unspecified point in the future.
20. Whilst the Commissioner noted above that the specific content of the information in question is not suggestive that its disclosure would be likely to result in prejudice, as he also noted the issue here is the perception that may come about if this information were to be disclosed. For the reasons given above, the Commissioner accepts that disclosure in this case could have the result that it would be become more difficult for the Home Office to secure the cooperation of third parties in its counter-terrorist efforts. The Commissioner finds that avoiding this outcome is required for the purpose of safeguarding national security and so the exemption provided by section 24(1) of the FOIA is engaged.
21. Turning to the balance of the public interest, the Commissioner has taken into account here the general public interest in openness about the work of the Home Office, as well as those factors that apply in relation to the specific information in question here.
22. Covering first arguments in favour of disclosure of the information, there is a strong public interest in the efforts of the Government to counter terrorism. This public interest exists on the grounds that disclosure of information about this work by the Government, with the Home Office as the lead department in the Government's counter-terrorist work, would improve public knowledge of the efforts made by the Government in this area and provide reassurance that these efforts are taking place and are appropriate.
23. The Home Office may argue that the content of the specific information in question here would provide little that would improve knowledge of the Government's counter-terrorism efforts. However, the approach of the Commissioner is that where a public interest exists in a particular

subject, this public interest will extend to all information about that subject.

24. Furthermore, on the issue of the specific content of the information in question, disclosure of this would contribute to public knowledge as to whether there are appropriate measures in place for the situation that a website is wrongly included on this list. The Commissioner believes that the public interest in understanding more about the Government's counter-terrorist efforts and in the specific issue covered by this information is a valid public interest factor in favour of disclosure of significant weight.
25. Turning to those factors that favour maintenance of the exemption, in any case where section 24(1) is found to be engaged, the inherent public interest in avoiding prejudice to the safeguarding of national security will be an important factor to take into account. In this case the Commissioner has found that this exemption is engaged on the basis that this is required for the purposes of the Government's counter-terrorist efforts. Clearly there is a very significant weight in avoiding prejudice to counter-terrorist work. This is a valid factor in favour of maintenance of the exemption of very significant weight here.
26. The Home Office has argued that the public interest in disclosure here has been partially served by the publication of a review of the CONTEST counter-terrorist strategy<sup>1</sup>. Paragraphs 10.90 – 10.113 cover strategy relating to the internet.
27. The view of the Commissioner is that the publication of this review is in the public interest in that it enhances understanding of the Government's counter-terrorist work. At the same time, public interest in disclosure of all information about this issue remains significant and extends to the specific information in question here.
28. Whilst the public interest inherent in this exemption will not always be a determinative factor, in practice for the public interest to favour disclosure where section 24(1) has been found to be engaged there must be specific and clearly decisive factors in favour of this. Although section 24(1) is a qualified exemption, clearly it would not be appropriate for the Commissioner to recognise anything less than the most weighty public interest in favour of maintenance of this exemption.

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<sup>1</sup> <http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/prevent-strategy-review?view=Binary>

29. In this case, whilst the Commissioner has recognised valid public interest in the disclosure of this information on the basis of its subject matter, his view is that this public interest is outweighed by the public interest in avoiding disclosure that could harm the safeguarding of national security. The conclusion of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so the Home Office is not required to disclose this information.
30. As this conclusion has been reached on section 24(1), it has not been necessary to go on to also consider section 43(2).

### **Other matters**

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31. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, or 40 working days where there are exceptional circumstances. In this case there was a delay of close to 9 months until the completion of the review. The view of the Commissioner is that this delay was grossly excessive and the Home Office should ensure that this is not repeated in relation to future requests.

## Right of appeal

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32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
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SK9 5AF**