

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 May 2023

**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 a contract to house asylum seekers at a specified property. The Home Office would neither confirm nor deny holding the information, citing section 38(2) (Health and safety) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 38(2) to refuse to confirm or deny whether it holds any information falling within the scope of the request.
3. The Commissioner does not require the Home Office to take any steps as a result of this notice.

## **Request and response**

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4. On 2 March 2023, the complainant wrote to the Home Office and requested information in the following terms:

“Please can you provide me with the following information with regard to the contract to house asylum seekers in the (address redacted), Council District at what was formally named (address redacted).

  1. Date the contract commenced
  2. Maximum number of Asylum seekers the hotel is capable of accommodating
  3. Name of the private contractor managing the contract
  4. Duration of the contract
  5. Notice period for either party to terminate the contract”.
5. The Home Office responded on 28 March 2023. It refused to confirm or deny that it held the requested information, citing section 38(2) of FOIA, of the health and safety exemption.
6. The complainant requested an internal review on 1 April 2023. Following its internal review, the Home Office wrote to the complainant on 20 April 2023 upholding its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 24 April 2023 to complain about the way their request for information had been handled. They argued that release of the information would not be detrimental to the safety or likely endanger the well being of any individual housed within the property.
8. The Commissioner has considered whether the Home Office was entitled to neither confirm nor deny that the requested information is held.

## **Reasons for decision**

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### **Neither confirm nor deny ('NCND')**

9. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is commonly known as “the duty to confirm or deny”. However, there are exemptions to this duty.

10. Section 38(2) of FOIA excludes a public authority from complying with the duty where simply confirming or denying that it holds information has the potential to endanger the health or safety of any individual.
11. The Home Office has taken the position of neither confirming nor denying whether it holds the requested information by citing section 38(2) of FOIA. The issue that the Commissioner has to consider here is not the disclosure of any requested information that may be held, but whether or not the Home Office is entitled to NCND it holds the information requested by the complainant.
12. The Commissioner does not know whether, as a matter of fact, the Home Office does or does not hold information falling within scope of the request. He does not consider it necessary to know this in order to reach a decision in this NCND case.

### **Section 38 – Health and safety**

13. Section 38(1) of FOIA states:

“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.”

14. As set out above, section 38(2) provides an exemption from the duty to confirm or deny where doing so would, or would be likely to, have the effects mentioned in subsection 38(1).
15. The Commissioner’s guidance on section 38<sup>1</sup> states that the degree of endangerment involved must be considered and whether it is significant enough to engage the exemption. The guidance includes examples of the types of information that might pose a risk to an individual’s health and safety if disclosed, or if confirmation or denial is given, as in this case. The list includes the following:

“any plans or policies relating to the accommodation of individuals, or groups of individuals where disclosure could lead to them being threatened or harassed (e.g., asylum seekers, ex-offenders).”

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/>

The Home Office recognised that disclosing the information would ensure there is full transparency in their approach to accommodating and supporting asylum seekers. However, it also stated:

"...the Home Office has a duty of care and responsibility to provide safety and protection to asylum seekers. It is well known that vulnerable asylum seekers are targets of reprisals or reactions, and individuals or groups of individuals have been threatened and harassed. The threats to individuals include both those accommodated at sites and those working there or visiting in any capacity.

As a general policy, the Home Office does not comment in respect of any request regarding named locations. To protect all locations, a consistent approach must be applied to any such request."

16. It is not suggested that disclosure of information around contracts would endanger the physical or mental health, or the safety, of residents housed in accommodation a contract applies to. The position is that confirming or denying whether specified premises are used to house asylum seekers would be likely to do so.

17. The Home Office has also said that to confirm or deny that the requested information is held would identify whether or not a named property is one that is used to house asylum seekers. It said that:

"To disclose the addresses and facilities used to accommodate asylum seekers would weaken the Home Office's stance on protecting the health and safety of individuals as it could lead them to being exposed to threats and harassment. One of the main provisions under this exemption refers to, any plans or policies relating to the accommodation of individuals, or groups of individuals where disclosure could lead them to being threatened or harassed."

18. The Home Office has previously submitted that speculation about possible asylum seeker locations has led to the targeting of properties by those prepared to break the law, intimidate, abuse, and cause criminal damage. It gave an example of such an incident in February 2023 within a hotel<sup>2</sup>.

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<sup>2</sup> <https://www.independent.co.uk/news/uk/home-news/migrant-hotel-riot-knowsley-curfew-security-b2282633.html>

19. The Home Office has said that a similar matter had been considered by the Commissioner in a previously published decision notice<sup>3</sup> involving an asylum seeker related request in which the Home Office had relied on section 38(2) of FOIA, a position which was upheld. The Home Office argued that the current case poses a similar risk.
20. Whilst previous decision notices are not binding upon the Commissioner, and he considers each case on its individual merits, the Commissioner has reviewed the content of the previous notice and accepts that the issues at stake are indeed similar.
21. The Commissioner has considered the Home Office's arguments carefully and he agrees that section 38(2) is engaged. He must next determine whether the associated public interest test favours confirming or denying that the requested information is held.

### **Public interest test**

22. The Commissioner notes that the complainant believes that disclosure of the specific information would not cause detriment to any individual who may reside at the property. He has taken into account that there is a public interest in the Home Office being transparent in its approach to accommodating asylum seekers. The Home Office has recognised this public interest and therefore proactively publishes some data on asylum and resettlement<sup>4</sup>, together with costs<sup>5</sup>.
23. Given that the name and address of the property are in the request, if the Home Office were to confirm or deny that the information was held, this in itself would disclose information on matters relating to the location of asylum seekers, i.e., it would indicate whether or not they were housed at that particular address.
24. In addition, if it were to confirm or deny whether the information is held, this would weaken the Home Office's stance on protecting the health and safety of vulnerable people and endangerment to their health and safety is, according to the Home Office, "more probable than not".
25. In addition to the Home Office's duty to provide safety and protection for asylum seekers, the Commissioner also acknowledges that this duty extends to any employees who may work at the property or any

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022389/ic-155600-d0j5.pdf>

<sup>4</sup> <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets>

<sup>5</sup> <https://www.gov.uk/government/collections/ho-annual-reports-and-accounts>

residents staying there, irrespective of whether or not they may be asylum seekers.

26. The Commissioner accepts the Home Office's argument that the threat of reprisals, harassment, and actual threats to asylum seekers and those assisting them is very real and can include physical violence.
27. As such, the Commissioner is satisfied that, in this case, the public interest test favours maintaining the exemption.
28. It follows that the Commissioner's decision is that the Home Office was entitled to rely on section 38(2) of FOIA to neither confirm nor deny whether it holds the requested information.

## Right of appeal

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29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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 .....**

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**