

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 22 June 2023

Public Authority: Home Office

Address: 2 Marsham Street, London SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information about guidance provided to police forces relating to immigration raids.
2. The Commissioner's decision is that the Home Office (HO) is entitled to withhold part of the requested information. However, he finds that not all the information is exempt.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information listed in the confidential annex with appropriate redactions under section 40(2) FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 13 July 2022, the complainant wrote to HO and requested information in the following terms:

"I would like this information in digital format. Please provide the following information:

- 1) Any guidance provided by the Home Office to police forces relating to the policing of immigration raids and the policing of protestors who may attend them.
 - 2) Any correspondence between the Home Office and police forces relating to immigration raids which have been disrupted by protests since July 2019. (Examples of such protests include that which occurred in Nicholson Square, Edinburgh on 5 May 2022, Dalston on 15 May 2022, Peckham on 11th June 2022, and Protest which occurred in Kenmure street - Glasgow in 2021)
 - 3) Any Home Office guidance or correspondence which mentions both anti-immigration raid protests and the Police Crime Sentencing and Courts Act 2022.
6. HO responded on 27 July 2022 stating it did not hold some of the requested information. It further stated that the information it did hold was exempt under section 31(1)(e) FOIA.
 7. Following an internal review HO maintained its position with regard to the application of section 31(1)(e) and additionally considered 31(1)(a) and (b) applied It explained that section 40(2) should also have been cited.
 8. Finally it stated that section 12(2) FOIA was applicable to part 3 of the request. HO explained that it was unable to offer definitive advice on how the request could be refined but it would consider any new request.
 9. In their complaint to the Commissioner the complainant stated:

"I believe S.40 has been inappropriately applied - we pre-empted this and asked for any personal information to be redacted in the internal review but this was ignored.

Secondly, there is a clear public interest in understanding how the Home Office intend to guide police on handling protests. Deportation high on agenda, as is the public reaction against it and understanding how police use and interpret new protest powers is vital to those who intend to take part so as to remain on the right side of the law. With no understanding of the practical application of legislation which is by design vague and gives police powers to interpret freely, any greater understanding is clearly beneficial to community relations with police forces which are at an all-time low.

As we made clear in our request, the public interest in disclosing how the Home Office intend to use their new powers to police protest (Police,

Crime Sentencing and Courts Act, 2022) clearly outweighs the requirement for the police and home office to ensure law and order; particularly since we permitted relevant redactions.

I have specifically asked for information relating to the protests which occurred around the raids by Home Office Immigration Enforcement whereas the Home Office has interpreted this incorrectly as a request for information regarding the operation of immigration enforcement.”

Scope of the case

10. The following analysis sets out the reasons why the Commissioner considers some of the information should be disclosed. As HO stated it did not hold any information within scope of part 1 of the request, and section 12(2) applied to part 3, this decision notice is focussed on the application of section 31 to part 2 of the request.

“Any correspondence between the Home Office and police forces relating to immigration raids which have been disrupted by protests since July 2019. (Examples of such protests include that which occurred in Nicholson Square, Edinburgh on 5 May 2022, Dalston on 15 May 2022, Peckham on 11th June 2022, and Protest which occurred in Kenmure street - Glasgow in 2021)”.

Reasons for decision

Section 31(1) – Law enforcement

11. Section 31 states:

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,
- (e) operation of the immigration controls

12. The Commissioner's guidance on section 31(1)(e)¹ states that it will be engaged if disclosure would, or would be likely to, prejudice physical immigration controls at points of entry into the UK. It could also protect information about issuing and approving work permits and the processing of asylum applications.
13. The term 'law enforcement' should be interpreted broadly. In the case of *William Thomas Stevenson v the Information Commissioner and North Lancashire Teaching Primary Care Trust* the Upper Tribunal commented that:

"it is plain from reading the activities listed in s.31(1) and the purposes specified in s.31(2), that they include activities and purposes which go beyond actual law enforcement in the sense of taking civil or criminal or regulatory proceedings. They include a wide variety of activities which can be regarded as in aid of or related to the enforcement of (i) the criminal law, (ii) any regulatory regime established by statute, (iii) professional and other disciplinary codes, (iv) standards of fitness and competence for acting as a company director or other manager of a corporate body (v) aspects of law relating to charities and their property and (vi) standards of health and safety at work" (paragraph 75).
14. The Commissioner has reviewed the withheld information and notes there is a limited amount that directly relates to raids themselves. The withheld information consists of email correspondence between the Home Office and the Metropolitan Police and Police Scotland. It includes press lines, meeting invitations and agendas.
15. In its response to the Commissioner, HO confirmed it was relying on section 31(1)(a), (b) and (e).
16. It explained that the correspondence provides information about the ways in which HO, specifically Immigration Enforcement, and police forces work together in planning and carrying out immigration removal operations and policing any protests which might take place.
17. Operations led by Immigration Enforcement are carried out in conjunction with territorial police forces, responsible for investigating criminality surrounding immigration. This applies to any location in-country, including points of entry. The extent of police involvement is determined by the particular circumstances of the Immigration

¹ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

Enforcement operation, including the likelihood of any protests at the location in question.

18. These operations are controversial and can in some cases attract protests and attempts to frustrate them. Information about the way in which operations are carried out and about the way in which Immigration Enforcement and police forces plan for and learn from protests would be of considerable value to anyone with criminal intent to build up a picture of law enforcement capabilities and procedures relating to in-country immigration enforcement.
19. Any such information, however narrow in scope in itself, can be pieced together to build up a more complete picture. It is important that immigration enforcement and associated police operations are not compromised in this way.
20. If it were made easier to anticipate and frustrate removal operations then that would prejudice the prevention of crime because it would both make it easier for protests to be organised, with a corresponding threat to public order, and make it more likely that attempts to frustrate operations would succeed. HO considered that section 31(1)(a) is therefore engaged.
21. HO stated that in some cases protests led to failure to apprehend the individual subject to removal, which would become more likely to occur if protesters had information of the type under consideration. Disclosure of the information within scope would also make it easier for those attempting to prevent removal operations to avoid apprehension. It therefore considered section 31(1)(b) is also engaged.
22. In relation to section 31(1)(e), the internal review gave reasons why HO disagreed with the complainant's contention that the exemption cannot apply because the raids do not occur at a point of entry to the UK. In your request for an internal review you quote ICO guidance in relation to section 31(1)(e) and argue that the exemption cannot apply because the policing of protests/protesters who attend immigration enforcement action does not occur at a point of entry to the UK and you have not requested any information about the approval of work permits or the processing of applications. However, the examples given in the ICO guidance are not exhaustive and are not meant to be. The process of removal of persons who have no right to be in the UK is part of the process of immigration control. It therefore follows that any prejudice caused by disclosure of information relating to removals is covered by section 31(1)(e).
23. HO stated that it follows that the prejudice described above in relation to section 31(1)(a) and (b) would also be relevant to section 31(1)(e),

because the prejudice would also be to removal operations and hence to the operation of immigration controls.

24. The Commissioner is satisfied that the exemptions are applicable to some of the withheld information. However, as he's explained, section 31 is not engaged with regard to the information that does not relate to the raids.

Public interest test

25. The original response acknowledged that there is a public interest in disclosure of information which would help members of the public to understand the measures taken by the Government to counter illegal immigration. However, HO considered that it does not follow that there is any public interest in disclosing the information within scope of this particular request. In any event, any public interest in disclosure of this correspondence is outweighed by the very strong public interest in avoiding the prejudice described above.
26. The complainant stated that 'there is a clear public interest in understanding how the Home Office intend to guide police on handling protests'. There is no information in the correspondence about the Home Office guiding the police on handling protests, which is an operational matter for the police.

The Commissioner's decision

27. Having reviewed the withheld information and considered all the circumstances of the case, the Commissioner has determined that not all the withheld information is exempt and this should be disclosed, subject to redactions under section 40(2) – personal information. This information is detailed in a confidential annex at the end of this notice, provided only to HO.

Other matters

28. The Commissioner notes the HO provided limited public interest arguments in support of its position.
29. He also notes that although section 12(2) was cited in relation to part 3 of the request, HO continued to respond to the remainder of the request. Where section 12 applies to any part of a request, it follows that it applies to the whole of the request.

Right of appeal

30. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Susan Duffy
Senior Case Officer
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