

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2023

Public Authority: Department for Levelling Up, Housing and Communities

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Levelling Up, Housing and Communities ("the DLUHC"), regarding the costs to the department of a specified 'smoking hut' which was reportedly constructed. The DLUHC refused to neither confirm or deny that it holds the information, citing section 31(3) of FOIA – law enforcement.
2. The Commissioner's decision is that the DLUHC is entitled to neither confirm nor deny whether it holds the information requested, and to rely on section 31(3), by virtue of section 31(1)(a) of FOIA. To do so would be likely to prejudice the prevention or detection of crime.
3. The Commissioner does not require the DLUHC to take any steps as a result of this decision notice.

Request and response

4. On 19 April 2023, the complainant wrote to the DLUHC and requested information in the following terms:

"Under the Freedom of Information Act 2000 I wish to see the following information:

- 1) The total cost to the Department of [named person's] 'smoking hut'. Please include the cost of construction along with costs of any fixtures, fitting decoration and any furniture.
 - 2) Full copies of all relevant invoices and purchase orders relating to the hut."
5. The DLUHC responded on 19 May 2023. It refused to confirm or deny that it holds the requested information, citing section 31(1)(a).
 6. Following an internal review the DLUHC wrote to the complainant on 7 June 2023. It stated that it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner 24 June 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the DLUHC were correct to neither confirm or deny that the requested information is held under section 31(1)(a).

Reasons for decision

Section 31 – Law enforcement

9. Section 31 of FOIA states that:

31.— (1) 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..."

Neither confirm nor deny

10. Section 31(3) states:

"the duty to confirm or deny does not arise if, or to the extent that compliance with section 1(1)(a) would or would be likely to, prejudice any of the matters mentioned in subsection (1)."

11. DLUHC cited section 31(3) by virtue of section 31(1)(a) and issued a neither confirm nor deny response to the complainant. It stated that to

confirm or deny whether DLUHC holds the information requested, would likely prejudice the prevention or detection of crime.

Likelihood

12. The DLUHC explained that it is relying on the lower threshold that disclosure 'would be likely' to have a prejudicial effect.
13. DLUHC has explained that the Secretary of State, along with other senior figures, is a recognised target for terrorist attack. It advised that the level of risk is exceptionally high in comparison to that faced by other Cabinet Ministers.
14. The DLUHC explained that confirming or denying that information is held could reveal information about its security measures, which would, in turn, place its staff at an unacceptable risk.

Public interest test

15. Sections 31(1)(a) and 31(1)(b) are qualified exemptions and are subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosure.

Arguments in favour of disclosure

16. The DLUHC has explained that it has considered the general public interest in favour of disclosure, on the basis that disclosure of information held by public authorities would increase transparency and accountability.

Arguments in favour of maintaining the exemption

17. The DLUHC explained it has weighed this against the countervailing arguments that by disclosing whether information exists or not regarding sensitive matters in relation to the security of the Department's buildings and specific whereabouts of senior individuals, it would be putting information into the public domain that could assist those with ill intent.
18. The DLUHC went on to say that by either confirming or denying whether information is held would potentially reveal information about the Department's security measures, which could be targeted by potential criminals and would in turn place the Department's staff at an unacceptable risk.

19. The DLUHC explained that the information that has been requested would likely to have a prejudicial effect on the prevention of a crime. As such, confirming if the information is held or not, would be likely to set a precedent on its ability to maintain the security of its ministers.

Balance of the public interest

20. The Commissioner acknowledges that there is always public interest in the disclosure of information. This promotes the aims of transparency and accountability, which in turn promotes greater public engagement and understanding of the decisions taken by public authorities.
21. The Commissioner accepts that the security of the DLUHC's ministers is paramount and outweighs all other considerations on confirming or denying whether the information is held. He considers that there is a stronger public interest in neither confirming nor denying whether the information in this case is held. If the DLUHC either confirmed or denied holding the information, it could potentially reveal information about its security measures, which could be targeted by potential criminals.
22. Having considered the arguments on the balance of the public interest test, the Commissioner concludes that the public interest in maintaining the exemption outweighs the arguments for disclosure in this case.
23. The Commissioner is satisfied that to confirm or deny whether or not the DLUHC hold the requested information, would be likely to prejudice the prevention or detection of crime. Therefore, section 31(3) by virtue of section 31(1)(a) of FOIA is engaged and the DLUHC was entitled to rely upon this exemption.

Right of appeal

24. 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

25. 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.
26. 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

Michael Lea
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