

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2024

Public Authority: Home Office

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office relating to the Research, Information and Communications Unit ("RICU"). The Home Office refused to disclose that information, citing sections 24(1), 31(1)(a) and 40(2) of FOIA as a basis for non-disclosure. In relation to part 2 of the request, the Home Office later changed its stance and stated that it did not hold the information in that part of the request.
2. The Commissioner's decision is that the Home Office has appropriately applied the exemption contained in section 24(1) (national security) of FOIA to withhold the requested information in parts 1 and 3. As he considers that section 24(1) covers the entirety of the requested information in those parts, he has not considered the other exemptions applied. The Commissioner also accepts that the Home Office does not hold information within the scope of part 2 of the request.
3. The Commissioner has also decided that the Home Office has breached sections 1(1)(a) and 10(1) of FOIA as it did not inform the complainant within 20 working days that it did not hold information within the scope of part 2 of their request.
4. The Commissioner does not require the Home Office to take any steps to ensure compliance with the legislation.

Request and response

5. On 27 June 2023 the complainant requested information from the Home Office in the following terms:-

"I am writing to request the following information relating to RICU:-

- A copy of the 2019 analysis product mentioned in the Shawcross review on the cohort labelled "Actively Patriotic and Proud."
- A copy of any guidance or similar issued to RICU staff on their obligations around protection Article 10 rights to freedom of expression in the course of their work.
- A copy of the 2020 RICU analysis outlining examples of "key cultural nationalist ideological texts" mentioned in the Shawcross review.

I would like all documents sent electronically please. Under Section 16 of the Act I also ask that if this request cannot be fulfilled under the legislation, that you offer advice and assistance to help the request comply with the act. I look forward to your response within 20 working days."

6. The Home Office responded on 25 July 2023 stating that it neither confirmed nor denied (NCND) whether information within the scope of the complainant's request was held by virtue of section 24(2) of FOIA. It also applied Section 23(5) (information supplied by or relating to security bodies), Section 31(3) (law enforcement) and Section 40(5) (personal information) of FOIA.
7. The complainant requested an internal review of the Home Office's response on 22 September 2023.
8. The Home Office provided its internal review response on 25 January 2024. It changed its original stance to state that it confirmed that it held the requested information, however it was now applying sections 24(1), 31(1)(a) and 40(2) as a basis for non-disclosure.
9. The Home Office contacted the Commissioner on 6 June 2024 and stated that it had realised that it did not hold information within the scope of part 2 of the complainant's request.

Reasons for decision

Information not held

10. The Commissioner understands that in part 2 of the request the complainant is asking for a copy of specific guidance provided to staff in the RICU. As such guidance is not provided to these staff, as there is no requirement to develop it, then the Commissioner accepts that the Home Office would have no reason to hold it.
11. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 24(1) of FOIA in this particular case in respect of the information requested in parts 1 and 3 of the request ("the withheld information")

Section 24 – National security

12. The Home Office has cited section 24(1) as a basis for non-disclosure of the requested information.
13. Section 23(1) of FOIA states that information held by a public authority is exempt information if it was directly, or indirectly, supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).
14. Section 24 of FOIA states that information which does not fall within section 23(1) is exempt information if exemption from the duty to communicate information is required for the purpose of safeguarding national security.
15. FOIA does not define the term "national security". However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007), the Information Tribunal was guided by a House of Lords case (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47) concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:
 - 'national security' means the security of the United Kingdom and its people;
 - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
 - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;

- action against a foreign state may be capable indirectly of affecting the security of the UK; and,
 - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
16. The approach that the Commissioner takes to the term 'required' as it is used in this exemption is that this means 'reasonably necessary'. In effect, as per the Commissioner's section 24 guidance, although there has to be a real possibility that the disclosure of requested information would undermine national security, it is not necessary to show that disclosing the information would lead to a direct or immediate threat to the UK.
17. The Home Office has requested that the detail of its submission arguments are not reproduced in the decision notice due to its sensitivity. The Commissioner has respected its position but has taken all those arguments into account in reaching his decision. The Home Office has stated that the arguments applied in a similar case in which the Commissioner issued a decision notice (IC-151842-H8T3) equally apply in this case.
18. Based on the arguments presented by the Home Office, and the nature of the requested information, the Commissioner is satisfied that this falls within the remit of national security and that, on that basis, it is reasonably necessary to protect the details. He therefore finds that the exemption is properly engaged.

Public interest test

19. Section 24 is subject to the public interest test, as set out in section 2 of FOIA.

Arguments in favour of disclosure

20. The complainant has argued that:-

"There is overwhelming public interest in disclosing potential overreach by RICU during its work, to shine a light on any wrongdoing and unjustified infringements of Article 10 rights. As old products that have been discredited by the Secretary of State in Parliament it is my view they would not prejudice law enforcement or national security in a meaningful way."

21. The Home Office recognises that there is a general public interest in openness and transparency in government, which will serve to increase public trust. Disclosure of the requested information could enhance the openness of government and help the public understand analysis compiled by the Home Office, and the guidance that staff adhere to.

Arguments in favour of maintaining the exemption

22. The Home Office submitted that:-

“There is a very strong public interest in safeguarding national security and related law enforcement activity. It is important that this sensitive information is protected, as disclosure could reveal information about government capabilities on assessing national security threats. It is considered that the release of this information would enable individuals to deduce how successful the Home Office is, in detecting these threats.”

Balance of the public interest

23. The Commissioner accepts that FOIA gives individuals a right of access to official information with the intention of making public bodies more transparent and accountable. With that in mind, he recognises that disclosing the withheld information in this case would meet the public interest in transparency and accountability surrounding the RICU’s measures to counter terrorist activity.
24. However, balanced against this, he must consider whether disclosure would have any effects which would run counter to the public interest in safeguarding national security, and if so, whether they are outweighed by the benefits of disclosure.
25. The Commissioner considers that there is a significant public interest in the government having an effective approach to countering extremism and terrorism. He agrees with the Home Office that the RICU’s counter-terrorism activities and strategies would be weakened by disclosure of the withheld information.
26. The Commissioner considers that it is clearly the case that the public interest in disclosure does not match the weight of the public interest in safeguarding national security. It follows that his conclusion is that the balance of the public interest favours maintaining the section 24 exemption.
27. Therefore, his decision is that the Home Office was entitled to rely on section 24(1) of FOIA to refuse to disclose the withheld information.

Procedural requirements

28. As the Home Office did not state in its original response to the complainant that it did not hold information within the scope of part 2 of their request, the Commissioner finds that the Home Office has not complied with section 1(1)(a) of FOIA which states as follows:

“(1) Any person making a request for information to a public authority is entitled-

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request”.

It has also not complied with section 10(1) of FOIA, which states that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

Other matters

29. The Home Office’s response to the complainant’s request for an internal review in this case exceeded the recommended 20 working days’ time frame. The Commissioner has made a record of this delay.

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

Deirdre Collins
Senior Case Officer

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