

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested information on contracts awarded to particular companies. The Home Office disclosed much of the requested information but it withheld some information about particular contracts, citing section 24(1) (National security) of FOIA.
2. The Commissioner's decision is that the withheld information was exempt from disclosure under section 24.
3. The Commissioner does not require further steps as a result of this decision.

Request and response

4. On 25 September 2023, the complainant wrote to the Home Office and requested information in the following terms:

"Under the provisions of the Freedom of Information Act 2000 (FOIA), please could you provide the number of contracts awarded to Tekever, Anduril Industries, SRT Marine Systems, Thales, Elbit Systems, and Sirius Insight between 2020 – present. In your response, please include:

- The Title and Description of the contracts

- The start / end dates of the contracts
 - The value (in GBP) of the contracts”.
5. The Home Office responded on 11 October 2023. It disclosed most of the requested information in respect of seven contracts, although for 3 of them it withheld their total value, citing section 43(2) (Commercial interests) of FOIA. It withheld all information about two further contracts, citing section 24(1) (National security).
 6. The complainant requested an internal review on 20 October 2023. The Home Office provided the outcome on 9 February 2024, maintaining its application of the two exemptions.

Scope of the case

7. The complainant initially complained to the Commissioner prior to receiving the internal review. Following receipt, on 16 February 2024, she confirmed that she continued to disagree with the application of sections 43 and 24 to withhold information.
8. During the Commissioner’s investigation, the Home Office revised its position. It disclosed the total value of the three contracts, which it had previously withheld under section 43(2). It maintained its application of section 24 to withhold the remaining information.
9. The analysis below considers the Home Office’s application of section 24 to withhold the requested information in respect of the two remaining contracts.
10. The Commissioner has viewed the withheld information.

Reasons for decision

11. Section 24(1) states that:

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security”.

12. 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.
13. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean 'reasonably necessary'. Although there has to be a real possibility that disclosure of the requested information would undermine national security, the impact does not need to be direct or immediate.

The complainant's position

14. The complainant told the Home Office:

"I fail to see how the release of the contract name, start/end dates, and value would 'facilitate counter measures and understanding of HO operations'. In my request, I did not ask for the contract details, nor did I request the deliverables. Indeed, the ICO notes that agencies should refer to the application of s.24 outlined in the ICO decision notice FS50178276¹. Here, it states that it is 'not sufficient for the information sought simply to relate to national security; there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged' (paragraph 24). Disclosure of the contract name, value, start and end dates cannot

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2009/505218/FS_50178276.pdf

seriously be considered as having 'an adverse effect on national security'."

The Home Office's position

15. In its response to the request, the Home Office told the complainant:

"In the circumstances of this case, it is not appropriate to provide any information that would undermine national security and therefore we are applying section 24(1) (national security) to part of your request...2 of the contracts...contain information which is sensitive and should be kept secure. Release of this information would impinge on National Security and facilitate counter measures and understanding of HO operations including risking prevention or detection of crime and operation of immigration controls."

16. In its internal review, it said:

"Although not all negative impacts on national security would be direct or immediate, we nevertheless consider that there is a real possibility that disclosure would undermine national security and withholding this information is necessary for the purpose of safeguarding national security.

It is generally recognised that 'malicious actors' can be highly motivated and may go to great lengths to gather intelligence. In this case, we believe there are grounds for withholding the requested information on the basis that it may assist 'malicious actors' or other determined individuals when pieced together with other information which they might be able to obtain elsewhere. Withholding the details of the two contracts in full is therefore necessary for the purpose of safeguarding national security."

17. During the Commissioner's investigation, it further commented:

"Disclosure of the withheld information could assist 'hostile actors' or other determined individuals in gathering intelligence for malicious purposes...This information, either on its own, or when combined with other related information, potentially obtainable or already in the public domain could aid these individuals with their activities. This phenomenon, commonly known as the 'jigsaw effect', increases the risks."

18. The Home Office provided confidential, specific information to the Commissioner about why, in order to safeguard national security, it was necessary to withhold the requested information. The Commissioner is unable to reproduce those arguments in the body of this decision notice, as doing so would itself reveal information which would undermine its

reliance on the exemption. The Commissioner is satisfied that the Home Office's arguments show that withholding the information about the two contracts in question is necessary for the purposes of safeguarding national security.

19. The Commissioner is therefore satisfied that section 24(1) is engaged.

Public interest test

20. Section 24(1) is subject to a public interest test, meaning that even though the exemption is engaged, the information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

21. The complainant did not offer any public interest arguments in favour of disclosure.

22. The Home Office stated:

"We recognise that there is an inherent public interest in transparency and accountability of public authorities. We also recognise the broad public interest in furthering public understanding of the issues with which public authorities deal. There is a clear public interest in the work of government department being transparent and open to scrutiny to increase diligence. It is in the public interest to release detailed information about Home Office awarded contracts."

Public interest arguments in favour of maintaining the exemption

23. The Home Office argued that it was clearly not in the public interest to disclose information which would harm national security.

24. It provided the Commissioner with confidential, specific information about the sensitivity of the contracts and the results of disclosing the withheld information. As above, the Commissioner is unable to reproduce them here without undermining the Home Office's reliance on the exemption. However, he is satisfied that its arguments show, specifically, how national security would be harmed, and consequently they are arguments of significant weight.

Public interest balancing test

25. The Commissioner appreciates that there is a clear and valid public interest in the disclosure of information concerning the awarding of Home Office contracts. There is a legitimate public interest in the disclosure of information which can inform the public about the amount

and nature of such contracts, as well as the companies the Home Office is contracting with.

26. However, the Commissioner recognises the very strong and powerful public interest in protecting the UK's national security. Whilst disclosure of the information could inform the public about the value and nature of certain contracts, disclosure risks undermining the UK's national security. He considers that the benefit that would flow from disclosure would not justify the potential harm to the UK's national security. In view of this the Commissioner agrees with the Home Office that the public interest favours maintaining the exemption at section 24(1) of FOIA.

Other matters

Internal review

27. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
28. Where an authority chooses to offer one, the code of practice states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
29. In this case, the Home Office took 77 working days to complete the internal review, which was not in accordance with the code of practice. The Commissioner would remind the Home Office of the importance of responding promptly and adhering to recommended timescales.

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.

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