

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about the Home Office's response to the Independent Chief Inspector of Borders and Immigration ('ICIBI') report about security checks on 'high risk' private jet flights arriving in the UK. The Home Office refused to disclose the requested information, citing sections 31(1)(a) (Law enforcement – prevention and detection of crime) and (e) (Law enforcement – immigration controls) and 24(1) (National security) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to apply section 31(1)(e) to refuse to disclose the requested information.
3. The Commissioner requires no steps as a result of this decision.

Background

4. In March 2024, the ICIBI presented to Parliament a report detailing a spot check inspection of Border Force's operational response to general aviation flights at London City Airport¹. The report was critical of certain

¹https://assets.publishing.service.gov.uk/media/6602a4a7a6c0f7580fef91e4/A_spot_check_inspection_of_Border_Force_s_operational_response_to_general_aviation_flights_at_London_City_Airport_January_to_February_2024.pdf

security arrangements it observed, including those for meeting and clearing private jets.

5. The Home Office has disputed some of the report's findings, saying that they were drawn from flawed data and "a known recording issue at London City Airport", which has since been addressed².

Request and response

6. On 20 February 2024, the complainant wrote to the Home Office and requested information in the following terms:

"Under the Freedom of Information Act 2000, I seek access to information held by the Home Office that directly contradicts the claims made by the former Independent Chief Inspector of Borders and Immigration, David Neal, regarding the security checks (or the alleged absence thereof) on 'high risk' private jet flights arriving in the UK.

Specifically, Mr. Neal has publicly claimed that a significant number of 'high risk' flights are landing in the UK without undergoing the necessary security checks, a situation he described as a 'scandal.' The Home Office has categorically rejected these claims. Given the public interest in this matter and the importance of transparency and accountability in public administration, I request the following:

1. Evidence Demonstrating Compliance: Documents, reports, or data held by the Home Office that demonstrate the implementation and effectiveness of security checks on private jet flights, particularly those classified as 'high risk.' This includes, but is not limited to, statistical data on the number of flights checked, outcomes of these checks, and any discrepancies noted.
2. Basis for Rejection of Claims: Specific evidence or analysis that served as the basis for the Home Office's public rejection of David Neal's claims. This may include internal audits, inspection reports, or communications that refute the assertion that 'high risk' flights have been allowed to land without appropriate checks.

² <https://www.gov.uk/government/publications/response-to-a-spot-check-inspection-of-operations-at-london-city-airport/the-home-office-response-to-the-independent-chief-inspector-of-borders-and-immigrations-report-an-inspection-of-border-forces-operational-respo>

I understand that certain information may be redacted for privacy or security reasons. However, I request that any redactions are kept to the minimum necessary and that the provided documents still convey the substantive evidence held by the Home Office that refutes Mr. Neal's claims.

This information is crucial for understanding the integrity of the UK's border security measures and the basis on which the Home Office has contested Mr. Neal's allegations. Transparency and accountability in addressing these claims are essential for maintaining public trust in the effectiveness and fairness of the UK's immigration and border security policies. The release of this information will contribute to an informed public discourse on the matter.”

7. The Home Office responded on 19 March 2024. It refused to disclose the requested information, citing sections 31(1)(e) and 24(1) of FOIA.
8. It said the requested information formed part of an ICIBI report which had recently been published, with redactions, and it provided a link to that report³.
9. The complainant requested an internal review on 19 March 2024, but said that she did not receive a response.

Scope of the case

10. The complainant contacted the Commissioner on 16 May 2024 to complain about the way her request for information had been handled. She said that the internal review had not been provided and she asked the Commissioner to consider the Home Office's reliance on sections 31(1)(e) and 24(1) of FOIA to refuse the request.
11. During the investigation, the Home Office provided the Commissioner with a copy of the internal review which it said it issued on 16 May 2024. It was satisfied that sections 31(1)(e) and 24(1) had been correctly applied. Additionally, it said that section 31(1)(a) was also engaged.

12. The complainant maintains she did not receive the internal review and she questions the Home Office's claim that it was sent on 16 May 2024. This point been considered in the 'Other matters' section of this decision notice.
13. The analysis below considers the Home Office's application of sections 31(1)(a) and (e) and 24(1) of FOIA, to refuse the request.
14. The Commissioner has viewed the withheld information which consists of the Home Office's response to the ICIBI report, proposals for redactions to the report (prior to its publication), a review of an internal casework tool used by Border Force officials, and correspondence from Border Force setting out its position on the report's claims.

Reasons for decision

Section 31(1)(e) – Law enforcement: the operation of the immigration controls

15. Section 31(1)(e) of FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice the operation of the immigration controls (that is, physical immigration controls at points of entry into the UK).
16. The Home Office explained to the Commissioner that it interprets 'private jet flights', as being general aviation ('GA') flights – that is, any civil flight (domestic or international) not operating to a specific and published schedule, and not a military flight. GA flights are managed by a casework tool which assists Border Force's decision-making about the risk classification for each flight, and about whether they must be met by Border Force officers or are suitable to be remotely cleared on arrival.
17. The Home Office said disclosure of the withheld information would reveal how Border Force risk-assesses flights and allocates resources on a risk-based approach, and would include intelligence-related information. Disclosure of this information would prejudice the operation of immigration controls because motivated individuals could use it to modify their actions; knowledge of the information would give them a greater chance of gaining unauthorised entry to the UK (for example, by seeking entry at locations where they believe they are less likely to be detected).
18. Motivated individuals would be able to exploit this information for their own purposes (including, potentially, for terrorism or criminal acts or for breaching UK immigration laws). For these reasons, Border Force must deploy its resources effectively and information which feeds into the risk

assessment process (which in turn leads to staff deployment) must not be disclosed. It follows that disclosing information about how its risk assessments operate would pose a significant operational risk not only to the security of the border, but potentially to national security.

19. The Commissioner is satisfied that the harm the Home Office envisages relates to the law enforcement interests protected by section 31(1)(e) – the operation of the immigration controls.
20. He is also satisfied that the envisaged harm - the circumvention of immigration controls - is not trivial. Clearly, circumventing immigration controls is an extremely serious matter, undermining the integrity of the UK's border security. They can facilitate criminal actions and undermine national security. Even unsuccessful attempts to circumvent immigration controls put a strain on resources and they can also cause public disquiet.
21. The Home Office said that disclosure **would** prejudice the operation of the immigration controls. The term "would prejudice" means that it must be more probable than not that the harm would occur. The Home Office gave the Commissioner specific examples of the effects of disclosure, which he is unable to reproduce here without compromising the exemption being relied on. The Commissioner is satisfied that the Home Office demonstrated that disclosure would reveal strategic information about its operational capabilities and that it is information which would be of value to anyone seeking to circumvent border controls. He is satisfied that there is a clear causal link between disclosure of that information and the envisaged harm.
22. Mindful that the information reveals information on risk assessment, procedures and staffing, the Commissioner is satisfied that its disclosure would prejudice the operation of border controls and therefore that the exemption at section 31(1)(e) provides grounds for withholding it in its entirety.

Public interest test

23. Section 31 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

24. The complainant said:

"The refusal narrowly interprets the public interest, focusing on operational risks without adequately weighing this against the broader public interest in transparency, accountability, and the enhancement of public trust."

25. She argued that disclosure would serve the public interest in government transparency and openness, especially in response to public officials' claims and the actions taken against them; in building public confidence in the institutions responsible for national security and border integrity; and providing effective oversight and scrutiny by enabling thorough scrutiny by the public, media, and parliamentary bodies of border security practices.

26. The Home Office provided the following arguments:

"Disclosing the requested information would provide transparency. It would reveal the evidence and rationale informing the Home Office's views in relation to some of the findings made by the Chief Inspector in his report, in relation to immigration and security checks undertaken on private jets arriving in the UK at London City Airport. Consequently, disclosure may help increase confidence (and trust) in the ability of Border Force officials to effectively manage the border."

Public interest arguments in favour of maintaining the exemption

27. The Home Office stated:

"...disclosure would have a detrimental effect on the security of the border: the release of sensitive immigration and security information held, specifically relating to the risk assessment and staffing levels could result in a mosaic effect enabling individuals to formulate a picture of how the Home Office consider immigration and security checks for private jets, in order to disrupt and prevent immigration, criminal and law enforcement activities. Releasing the information could enable those who engage in active criminality, and worse (e.g., those who pose a national security risks), with sufficient information to enable them to target and disrupt security checks which are conducted for private jet flights into the UK. It is considered that this is a weighty factor in the public interest assessment.

Protecting the UK border is, and always have been, of paramount importance to the Government. It has never been government practice, for operationally sensitive security checks information, relating to law enforcement to be released. Disclosing information which would provide malicious individuals with the opportunity to

deceive, evade or circumvent crucial border security checks is clearly not in the public interest.”

Balance of the public interest

28. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight in the public interest test. He also recognises that the ICIBI report was critical of some of the arrangements for handling incoming GA flights and also that ICIBI's then Inspector, David Neal, was removed from his post following public comments that he made about this and other reports⁴. Disclosure would inform the public about the Home Office's reasons for disagreeing with the serious claims about border safety, made in the report.
29. However, on that point, the Commissioner notes that there is some information in the public domain regarding the Home Office's general reasons for rejecting some of the report's findings. As referred to in paragraph 5, it published a response paper, explaining that it considers the data on which the ICIBI's conclusions were based, to be flawed. It said there was, at the time of the inspection, a problem with flight classification recording which led to some low-risk flights (which were not met by Border Force staff), being incorrectly recorded as high-risk. It said this problem has since been corrected. The paper noted that Border Force had invited further discussions on the issue, and that the ICIBI had not engaged with the invitation.
30. The Commissioner considers that this published paper goes some considerable way to satisfy the public interest in informing the public about the Home Office's reasons for rebutting some of the report's most critical conclusions.
31. When considering whether it better serves the public to disclose or withhold the information, the Commissioner recognises the strong public interest in protecting the ability of the UK to protect its borders. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption. In this case, it would not be in the public interest to prejudice the capabilities and effectiveness of Border Force by disclosing information that could help build up a picture of the UK's border security arrangements, and in so doing, placing the UK's borders at increased risk of harm and infiltration.
32. Taking all the above into account, the Commissioner has concluded that to justify disclosure in this case, the prejudice to the processes

⁴ <https://www.bbc.co.uk/news/uk-68354377>

described in section 31(1)(e) would need to be outweighed by sufficiently weighty public interest arguments. The Commissioner does not consider that the public interest arguments in favour of disclosure are sufficiently weighty, particularly in view of the information that is already in the public domain. His decision is therefore that the public interest in the maintenance of the exemption at section 31(1)(e) outweighs the public interest in disclosure. The Home Office was entitled to rely on section 31(1)(e) to refuse to disclose the withheld information.

33. As the Commissioner is satisfied that section 31(1)(e) of FOIA applies to all the withheld information, it is not necessary to consider the application of the remaining exemptions cited by the Home Office.

Other matters

Internal review

34. 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 the FOIA.
35. 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.
36. The complainant requested an internal review on 19 March 2024. She said no internal review was received and she complained to the Commissioner on the fortieth working day.
37. The Home Office told the Commissioner it had responded on 16 May 2024, and it forwarded to the Commissioner a copy of the covering email and its attached letter.
38. The complainant has questioned whether the Home Office did send the internal review on 16 May 2024, or whether the document was created at a later date, and forwarded in response to the Commissioner's enquiries.
39. The Commissioner has no reason to doubt that, for whatever reason, the complainant did not receive the Home Office's email when it was first sent. However, he is satisfied from the metadata of the email, and

its attached document, that both items were created on 19 March 2024 and that the email was sent at 09:15.

40. He therefore finds no failure to comply with the section 45 code in that regard.

Right of appeal

41. 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

42. 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.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF