

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 October 2024

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

Decision (including any steps ordered)

1. The complainant requested training material about Operation Sommen. The Home Office refused to provide the requested information, citing both sections 31(1)(a) (the prevention or detection of crime) and 31(1)(e) (the operation of immigration controls) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on sections 31(1)(a) and (e) of FOIA to refuse this request for the reasons set out in this notice.
3. No steps are required as a result of this decision.

Background

4. The Commissioner understands that the strategic aim of 'Operation Sommen' was to deliver an operational plan to reduce the number of migrant vessels seeking to cross the English Channel by deterring migrants from attempting the journey, to restore public confidence in the UK's control of its borders and to protect life.
5. The purpose was to deliver an operational plan and tactics to safely and dynamically turnaround a positively identified migrant vessel in UK territorial waters to prevent it from reaching UK shores, and induce it to return to France.
6. The strategic intention was for these operational tactics to deter migrants from using small boats (or other high risk means) to reach the

UK, and to ensure that the route became unviable for organised criminals to profit from and exploit. It was therefore aimed at being a deterrent to both individual migrants and to organised criminal gangs.

7. The Commissioner notes that the turnaround tactics, as part of Operation Sommen, were never employed against a small boat because no small boat was identified and assessed as suitable for this tactic to be safely and lawfully employed and in accordance with the detailed criteria set out in the SOP (Standard Operating Procedure).
8. From 14 April 2022, the Home Secretary made the decision to withdraw the policy and procedures underpinning the turnaround tactics. From that date, Operation Sommen was no longer a live operation.
9. Although not legally binding, the Commissioner has taken into account his previously issued decision notice¹ (IC-152077-K0T2). In that case, the same complainant (who has also brought the complaint under consideration here), had requested the training material for the "push back at sea" operation (ie Operation Sommen) amongst other information.
10. The relevant part of that decision notice found that the Home Office was entitled to withhold the requested training information by virtue of sections 31(1)(a) and (e) of FOIA.
11. This decision was subsequently appealed by the same complainant to the First tier Tribunal², who found that the Home Office was entitled to rely on sections 31(1)(a) and (e) for the requested training material.

Request and response

12. On 18 January 2024, the complainant wrote to the Home Office and requested information in the following terms:

'From 14 April 2022 the Home Secretary made the decision that the policy and procedures which underpin the delivery of turnaround tactics was withdrawn. From this date, therefore, Operation Sommen to deliver the turnaround tactics was no longer a "live operation".

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022725/ic-152077-k0t2.pdf>

² <https://www.bailii.org/uk/cases/UKFTT/GRC/2024/3.html>

Provide training material regarding push back at sea.'

13. The Home Office responded on 15 February 2024. It said it was considering applying section 31, the FOIA exemption for law enforcement, and was extending the 20 working days' statutory response deadline in order to carry out the associated public interest test.
14. The Home Office provided its substantive response on 13 March 2024. It refused to provide the requested information, citing sections 31(1)(a) (the prevention or detection of crime) and 31(1)(e) (the operation of immigration controls) of FOIA.
15. The complainant requested an internal review on 3 April 2024.
16. Following its internal review, the Home Office wrote to the complainant, late on 20 June 2024. It maintained its original position but also made reference to the aforementioned First-tier Tribunal appeal decision and said its position remained unchanged. Specifically, the Home Office said:

'Whilst it is recognised that Operation Sommen is no longer a 'live operation' and turnaround tactics are not currently being considered, it is not certain that such tactics or something like them might not be considered in the future. Furthermore, the withheld information includes information about Border Force's wider capabilities and operational procedures, not restricted to the specific circumstances of Operation Sommen. The Tribunal agreed that "...there is some additional public interest in withholding the information because it would reveal information about Border Force capabilities and operational tactics more generally which could be used by individuals or criminal groups in building up a picture of strengths and weaknesses, operational priorities and activities and areas of highest risk" (paragraph 90 of the judgment). We remain of the view that the withheld information would be of obvious use to those, including organised criminals, who attempt to evade or undermine the measures put in place or which might be put in place to deter or prevent such entry.'

Scope of the case

17. The complainant contacted the Commissioner on 20 June 2024 to complain about the way his request for information had been handled.

18. The Home Office told the Commissioner it did not wish to submit any additional explanation or arguments beyond those given to the complainant in the substantive response and internal review outcome.
19. The Commissioner has considered whether the Home Office was entitled to rely on sections 31(1)(a) and (e) of FOIA to withhold the requested training material.

Reasons for decision

Section 31 – Law enforcement

20. The Home Office is relying on sections 31(1)(a) and (e) of FOIA to withhold the requested information. The cited exemptions were applied equally by the Home Office to the withheld training material.
21. Section 31 of FOIA allows a public authority to withhold information which, if disclosed, could harm its own, or another public authority's ability to enforce the law.
22. Sections 31(1)(a) and (e) of FOIA apply where disclosure would, or would be likely to, prejudice:
 - (a) the prevention or detection of crime; and
 - (e) the operation of the immigration controls.
23. In order for the exemption to apply, it must be the case that if the withheld information was disclosed, it would, or would be likely to, cause prejudice to the matters referred to in subsections (a) and (e). Three criteria must be met:
 - the actual harm which the Home Office envisages must relate to the applicable interests within the exemptions it has cited;
 - there must be a causal relationship between disclosure and prejudice to those interests. This prejudice must be real, actual or of substance; and
 - the Home Office must show that the level of prejudice it envisages is met – ie it must demonstrate why disclosure 'would be likely' to result in prejudice or, alternatively, why disclosure 'would' result in prejudice.
24. The Home Office has explained that organised criminal gangs are heavily involved in small boat crossings by migrants. Such crossings are

therefore a law enforcement issue, as well as an immigration issue. The complainant did not dispute the application of the exemption.

25. The Home Office has argued that disclosure would interfere with and undermine joint French and UK attempts to prevent illegal crossings to the UK. These are clearly matters which relate to the prevention or detection of crime, the apprehension or prosecution of offenders and the operation of the immigration controls.
26. As regards a causal relationship between disclosure and prejudice to the above matters, the Commissioner is satisfied that disclosure of the training materials used by the Home Office's Border Force to deliver these tactics, would provide insights of value to criminal groups seeking to evade or undermine similar tactics.
27. At internal review, the Home Office said it was satisfied that the prejudice set out above "would" occur if the requested information was to be disclosed.
28. The test that the Commissioner applies when considering whether prejudice "would" occur is that there must be a more than 50% chance of the disclosure causing the prejudice, even though it is not absolutely certain that it would do so; it must be more probable than not that prejudice would occur as a result of disclosure.
29. The Commissioner has previously been presented with credible evidence that illegal migrant crossings to the UK are run by sophisticated organised crime groups, which operate their criminal enterprises mimicking the models of legitimate business³. Much like a legitimate market appraisal, the gangs facilitating illegal crossings of the English Channel will analyse their market to maximise success which will fuel future business. As such, the withheld information would undoubtedly be of assistance, when pieced together with other information, to their planning of further, illegal crossings.
30. The Commissioner is therefore satisfied that the higher threshold of "would" prejudice is met in this case.
31. As the three criteria set out in paragraph 23 are satisfied, the Commissioner considers that sections 31(1)(a) and (e) of FOIA are engaged.

³ See the Maritime & Coastguard Agency's comments in <https://ico.org.uk/media/action-weve-taken/decisionnotices/2023/4025721/ic-230053-k1d3.pdf>

Public interest test

32. The exemption is subject to a public interest test. This means that the information must be disclosed if the public interest in disclosing the information is equal to, or greater than, the public interest in protecting the matters referred to in subsections (a) and (e) of section 31 of FOIA.

Public interest arguments in favour of disclosure

33. The complainant told the Commissioner that he disagreed with the balance of the public interest test, stating that there are not going to be “push back” tactics used as the policy had been scrapped.
34. The Home Office submitted the following arguments in favour of disclosure in relation to both section 31(1)(a) and (e), stating that it recognises there is a public interest in ensuring confidence in the United Kingdom’s law enforcement systems and immigration controls respectively:

“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 departments being transparent and open to scrutiny to increase diligence in relation to push back at sea training material.”

Public interest arguments in favour of maintaining the exemption

35. The Home Office submitted the following arguments against disclosure of the requested information. Although there is some repetition, the Commissioner has reproduced the Home Office’s arguments as they were presented at internal review. For section 31(1)(a) of FOIA, the Home Office said:

“The Home Office holds the information requested. It is considered any release of the operationally sensitive information held, could result in a mosaic effect enabling an individual to formulate a picture of how the Home Office operational procedures are conducted. Training materials are sensitive and enable the Home Office to prevent criminality, ensuring the detection for crime as part of law enforcement operational activities. The disclosure of information on training materials and potential policies and methods adopted by law enforcement agencies would be likely to have a detrimental impact at the border.

Releasing this information could potentially enable those, or who are involved in active criminality, and at the worst-case scenario end of the spectrum could potentially provide enough information to enable criminals to target and disrupt immigration processes.

Protecting the UK border is, and always has been, of paramount importance to this Government. It has never been government practice, for potentially operationally sensitive immigration information, relating to law enforcement to be released. Disclosing potential immigration control training materials, would prejudice law enforcement operations."

36. For section 31(1)(e) of FOIA, the Home Office said:

"The Home Office holds the information requested. It is considered any release of the operationally sensitive information held, could result in a mosaic effect enabling an individual to formulate a picture of how the Home Office operational procedures are conducted. Training materials are sensitive and enable the Home Office to prevent criminality, ensuring the detection for crime as part of law enforcement operational immigration control activities.

Disclosing the training materials requested would be likely to undermine physical immigration controls at points of entry into the UK and measures taken to avoid people travelling to the UK if they do not have the correct paperwork. Releasing this information could potentially enable those, or who are involved in active criminality, and at the worst-case scenario end of the spectrum could potentially provide sufficient information to enable criminals to target and disrupt immigration control processes.

Protecting the UK border is, and always has been, of paramount importance to this Government. It has never been government practice, for potentially operationally sensitive immigration information, relating to law enforcement to be released. Disclosing potential immigration control training materials, would prejudice law enforcement operations."

Balance of the public interest

37. The Commissioner recognises that, for various reasons, the issue of migrant crossings is one which is in the public eye. He also acknowledges the complainant's position that there is a public interest in disclosure of the requested training material now that Operation Sommen has been abandoned. However, that is not to say that such an

approach may be adopted again in the future. Even if it is not, some of the training principles and approaches may be utilised in future Operations and tactics. Furthermore, even if the training material is not used in the same format moving forward, its release could provide those intent on criminal activity with valuable insight into the sorts of approaches used to police the UK's borders.

38. The Commissioner is mindful of the Home Office's position that:

"The information request would be considered as operationally sensitive regarding law enforcement criteria. We would not wish to compromise our sensitive law enforcement and intelligence operations."

39. In addition, the Commissioner has had regard to the very strong public interest in ensuring that the disclosure of information does not materially impede the prevention and detection of crime, the apprehension or prosecution of offenders or the operation of the immigration controls. As set out he is satisfied that disclosure in this case would inform criminal strategies to undermine the prevention of illegal crossings. This would render the security provisions put in place, and partly funded by UK taxpayers, less effective.

40. On balance, the Commissioner has decided that the disclosure of information that has the potential to aid the strategies of organised crime groups is not in the public interest. For these reasons, the Commissioner accepts that the public interest favours maintaining the exemptions. It follows that the Commissioner finds that the Home Office was entitled to rely on sections 31(1)(a) and (e) of FOIA to refuse the request.

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.

Carol Scott
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