

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2017

Public Authority: Higher Education Funding Council for England
Address: Nicholson House
Lime Kiln Close
Stoke Gifford
Bristol

Decision (including any steps ordered)

1. The complainant has requested information relating to 'Prevent' and a number of London universities.
2. The Commissioner's decision is that the Higher Education Funding Council for England (HFCE) has correctly applied section 24(1) (national security) to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 21 February 2017, the complainant requested information in the following terms:

"Could you please provide both the current Prevent policies and also the 2016 Prevent report, for:

- a. Birkbeck, University of London City,*
- b. University of London*
- c. Goldsmiths, University of London*
- d. King's College London*
- e. London Business School*
- f. London School of Economics and Political Science*
- g. Queen Mary, University of London*
- h. St George's, University of London*

- i. School of Oriental and African Studies*
- j. University College London*

5. On 17 March 2017 HEFC responded and refused to provide the requested information. It cited section 36(2)(c) of the FOIA as its basis for doing so.
6. HEFC wrote to the complainant on 18 April 2017 explaining that an appeals panel had reviewed the decision and supported it. It further explained that the Chief Executive would consider the panel's deliberation and provide a final response. The Chief Executive wrote to the complainant on 25 April 2017 upholding the original decision.

Scope of the case

7. The complainant contacted the Commissioner on 2 May 2017 to complain about the way his request for information had been handled.
8. During the Commissioner's investigation HEFCE also included a late reliance on sections 24(1) (national security) and 31(1)(a) (prevention and detection of crime). The Commissioner considers the scope of this case to be to determine if HEFC has correctly applied any of the exemptions it has cited.

Reasons for decision

Section 24 – national security

9. Section 24 provides an exemption from the duty to disclose where this is reasonably required for the purposes of national security. Consideration of this exemption involves two stages; first, the exemption must be engaged due to the requirements of national security. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in maintaining the exemption does not outweigh the public interest in disclosure.
10. The Commissioner interprets "reasonably required" as used in section 24 to mean "reasonably necessary". The exemption will, therefore, be engaged if it is reasonably necessary for the purpose of safeguarding national security for the requested information to be withheld.

HEFCE's role under the Counter-Terrorism and Security Act 2015

11. HEFCE has been appointed by the Government to monitor the performance by higher education providers of their 'Prevent' duty under

section 26 of the Counter-Terrorism and Security Act 2015. This duty requires Relevant Higher Education Bodies (RHEBs as defined by the Counter Terrorism and Security Act 2015) to have 'due regard to the need' to prevent people from being drawn into terrorism.

12. In order for HEFCE to satisfy government that providers are having due regard, it has a published framework setting out how it will monitor RHEBs' compliance. At the time of the request, the "Updated framework for the monitoring of the Prevent duty in higher education in England"¹ was in place. This has since been updated and replaced with the "Framework for the monitoring of the Prevent duty in higher education in England: 2017 onwards"².
13. This monitoring framework explains that the Act requires all RHEBs to provide HEFCE with any information it may require for the purposes of monitoring their compliance with the Prevent duty and sets out how HEFCE will gather that information. Through this monitoring framework, HEFCE will establish whether RHEBs have appropriate policies, procedures or arrangements in place to respond to the Prevent statutory guidance and if these are robust and implemented actively.
14. In January 2016, RHEBs were required to provide the first set of information - a self-assessment approved by the accountable officer or proprietor. Between 1 April and 1 August 2016 all providers then submitted detailed information setting out how they had responded to the statutory guidance, including data returns. HEFCE consider this combination of information to constitute the Prevent "report" as referred to in the request. It provided interim reports on the outcomes of its monitoring work to the Department for Education in February 2016 (following the self-assessment returns) and in September 2016.
15. HEFCE considers that disclosure of information about referrals to Channel³ from a specific RHEB would undermine the Prevent programme. There is a serious terrorist threat to the United Kingdom and disclosing this information into the public domain would put national security at risk by jeopardising or negating the government's efforts to prevent acts of terrorism and terrorist related crime;

¹ <http://www.hefce.ac.uk/pubs/year/2016/201624/>

² <http://www.hefce.ac.uk/pubs/year/2017/201710/>

³ <https://www.gov.uk/government/publications/channel-guidance>

16. HEFCE explained that disclosure of the full content of Prevent reports will contain information relating to risks at certain RHEBs and expose gaps in compliance that would lead to targeting by groups looking to radicalise students and commit criminal acts.
17. The Commissioner has reviewed an example of a Prevent submission. The information it contains relates to the structure of teaching arrangements and relationships between universities and placement providers. It also explains what relationships exist with local Prevent partners. There are a number of paragraphs that, if disclosed, could identify potential weaknesses that could be exploited.
18. The Commissioner considered whether it would be possible to disclose a redacted version of the requested information, rather than withholding it in its entirety. However, she considers that redaction and a partial disclosure would not be practicable in this case.
19. Taking all the above into account, the Commissioner's view is that in this case, the exemption from the duty to disclose in relation to the information in question is reasonably required for the purposes of national security. She therefore considers that the exemption provided by section 24(1) of the FOIA is engaged.

Public interest test

20. Section 24 is a qualified exemption and so it is nevertheless necessary to consider whether the public interest favours maintaining the exemption or disclosing the information.
21. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of the particular exemption, as well as the specific factors that apply in relation to the requested information.

Public interest arguments favouring disclosure

22. The arguments considered in this decision notice surround the need to protect the requested information due to its subject matter. However, conversely, the Commissioner recognises that there is also a strong public interest in disclosure of the requested information because of its subject matter. The Commissioner's view is that any information that details the anti-terrorist efforts being made by the Government will be the subject of considerable public interest in order to improve knowledge, understanding and confidence in the work being undertaken by the Government in this vital area.

23. There is a general public interest in knowing how HEFCE is fulfilling its functions and in the transparency and accountability of its operations more generally;
24. There is a public interest in knowing about how HEFCE carries out its monitoring role and how effective it is;
25. There is a public interest in understanding whether RHEBs are compliant with the Prevent duty and the extent of the risk posed by radicalisation in RHEBs

Public interest arguments favouring maintaining the exemption

26. In any situation where section 24(1) is found to be engaged, the Commissioner must recognise the public interest inherent in this exemption. Safeguarding national security is a matter of the most fundamental public interest; its weight can be matched only where there are also equally fundamental public interests in favour of disclosure of the requested information.
27. There is a public interest in ensuring that information submitted to HEFCE relating to Prevent compliance is not routinely disclosed. Information that exposes risks and issues with compliance at specific RHEBs could be used by those groups looking to radicalise students to target individual institutions, thereby increasing the risk to national security and making the commission of criminal activities more likely.
28. Disclosure of geographically specific information in relation to Prevent compliance and Channel referrals would be likely to reveal areas in which police and security agencies are more active, potentially prejudicing ongoing operations being conducted if radicalisation and/or criminal activities were to cease or move to a different location. This prejudice caused to ongoing security activity is not in the public interest.
29. Given the current threat from terrorist actions in the UK, there is a strong public interest in ensuring that national security and law enforcement activities are not prejudiced by the disclosure of information that would undermine the Channel referral programme.

Balance

30. In any case where the possible release of counter-terrorist related recorded information is under consideration, the likelihood of those materials being exploited by extremist individuals and groups will be relevant. In this case, as well as the that have a particular objection to Prevent, it is likely that there would be extremist individuals and groups that would seek to exploit the disclosure of the information in question, to the detriment of the Government's counter-terrorist efforts.

31. The arguments it has provided concern disclosure being detrimental to the Prevent strategy, the aim of which is to prevent terrorism. As such, they are clearly relevant to national security, which is at the heart of section 24.
21. However, as set out at paragraph 15, above, section 24 will only be engaged if exemption from disclosure is "reasonably necessary" for the purpose of safeguarding national security.
32. In conclusion, the Commissioner has recognised public interest of considerable weight in favour of disclosure given the subject matter of the requested information. She does not, however, believe that it matches the weight of the public interest in avoiding a disclosure that could be detrimental to national security. The finding of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and that HEFCE was not obliged to disclose the requested information.

Right of appeal

33. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Andrew White
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