

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 May 2020

Public Authority: London Borough of Redbridge
Address: Lynton House
255 - 259 High Road
Ilford
IG1 1NY

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Redbridge (the Council) seeking information about whether an organisation had received funding to deliver Prevent training and programmes. The Council refused to confirm or deny whether it held information falling within the scope of the request on the basis of sections 24(2) (national security), 31(3) (law enforcement) and 43(3) (commercial interests) of FOIA.
2. The Commissioner has concluded that the Council is entitled to rely on section 24(2) of FOIA and that in all the circumstances of the case the public interest favours maintaining this exemption. No steps are required.

Request and response

3. The complainant submitted the following request to the Council on 6 August 2019:

'I would like to request the following information about Aurety Limited.

1. *Will Aurety Limited receive funding for their 'Mothers Safeguarding champions' programme for 2019/20 financial year?*
2. *If so, how much funding will Aurety Limited receive for their Mothers Safeguarding champions' programme for 2019/20?*

- 3. How many cohorts will the Aurety Limited be delivering in 2019/20 as part of their 'Mothers Safeguarding champions' programme?*
 - 4. Which areas in Redbridge will Aurety Limited be delivering in 2019/20 as part of their 'Mothers Safeguarding champions' programme?*
 - 5. What are the projected outcomes of the 'Mothers Safeguarding champions' programme?*
 - 6. Are Tell Mama or Faith Matters delivery partners of the programme or involved in anyway and if so, how?*
 - 7. To provide us with the course materials that are being used to deliver the 'Mothers Safeguarding champions' programme?'*
4. The Council responded on 20 August 2019 and refused to confirm or deny whether it held any information falling within the scope of the request on the basis of sections 24(2) (national security), 31(3) (law enforcement) and 43(3) (commercial interests) of the FOIA.
 5. The complainant contacted the Council on 12 September 2019 and asked it to review this decision.
 6. The Council informed her of the outcome of the internal review on 3 October 2019. The review upheld the application of the various exemptions.

Scope of the case

7. The complainant contacted the Commissioner on 8 October 2019 about the Council's refusal to provide her with the information she had requested. She disputed the Council's position that the various exemptions provided a basis to refuse her request, and even if they did, she argued that the public interest favoured disclosure of the requested information. She was also unhappy that the refusal notice and internal review were carried out by the same person.
8. In relation to this complaint it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the

requested information, if it is held. Both rights are subject to the application of exemptions.

9. As explained above, the Council is seeking to rely on sections 24(2), 31(3) and 43(3) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the request. Therefore, this notice only considers whether the Council is entitled, on the basis of these exemptions, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

Reasons for decision

Section 24 – national security

10. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security.
11. 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.
12. 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 this means that there has to be a risk of harm to national security for the exemption to be relied upon, but there is no need for a public authority to prove that there is a specific, direct or imminent threat.

13. Therefore, section 24(2) is engaged if the exemption from the duty to confirm or deny is reasonably necessary for the purpose of safeguarding national security. The Commissioner considers that section 24(2) should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.

The Council's position

14. The Council's rationale for relying on section 24(2) focused on the consequences that complying with section 1(1)(a) of FOIA would have on the Prevent programme. The Council emphasised the role that Prevent plays in the UK's counter terrorism strategy. (Prevent is one of the four strands of the government's CONTEST Counter Terrorism Strategy). In light of this the Council argued that weakening the effectiveness of projects, delivered under the Prevent programme, would have an adverse impact on the UK's national security.
15. The Council advanced two broad arguments to support this position.
16. Firstly, the Council explained that in order to deliver Prevent local authorities depended upon civil society organisations (CSOs). However, due to the risk of being targeted either through personal attacks in the media or through the undermining of their work, many CSOs are unwilling to work with Prevent if they face disclosure of this fact. The Council argued that the inability to find suitable CSOs to work within the Prevent space would jeopardise the delivery of the Prevent counter-terrorism strategy, and as a result jeopardise the security of the UK and its citizens.
17. Secondly, the Council argued that in highlighting whether an area has dedicated Prevent funding, and how much funding an area receives, would allow for a geographical threat map to be built up via multiple FOI requests across different areas. It noted that funding for Prevent is allocated based on a threat assessment for each area. Therefore, this information could be used to undermine the Prevent programme and potentially be used in the preparation of terrorist acts.
18. With regard to the complainant's counter arguments to challenge the engagement of the exemptions, which are set out below, the Council offered the following responses:
19. In relation to the Prevent programmes delivered by the Council, some are advertised through newsletters and sometimes targeted advertising by providers.
20. The Council noted that the tweet cited by the complainant related to the programme that was delivered in 2018/19. It explained that Prevent

projects are funded on a yearly basis and must be delivered within the financial year that the funding is allocated for. The request which is the focus of this complaint covered the financial year 2019/20 and therefore the tweet cited by the complainant does not relate to the same year as the enquiry.

21. Finally, the Council explained that details of payments made to Prevent project providers in 2019/20 do appear in the proactive publication of spending data.

The complainant's position

22. The complainant argued that confirming whether or not the requested information was held would not undermine the delivery of the Prevent programme and in turn harm national security.
23. In support of this position she pointed to the information already in the public domain about the company covered by her request noting that it had appeared in the press discussing work it had undertaken involving Prevent. In particular, she identified a tweet which appeared to confirm that Aurety had delivered Prevent safeguarding programmes in Redbridge.
24. She also emphasised that information regarding organisations delivering Prevent programmes was available in the public domain, predominantly through the advertising of the programme but also after delivery through council supplier payments reports.

The Commissioner's position

25. In relation to the first argument advanced by the Council, the Commissioner acknowledges that Prevent has attracted some controversy. She also understands that the range of work undertaken by CSOs under Prevent varies from general awareness projects, for example highlighting what radicalisation might look like, to more discreet, intense work via specialised projects which may include working with rehabilitated offenders, or other individuals that have been impacted by radicalisation. The Commissioner understands that organisations in the latter categories require a higher degree of anonymity in order to deliver the projects. In light of the controversial nature of Prevent and the sensitive aspects of some of the work undertaken in relation to it the Commissioner is persuaded that if the Council complied with section 1(1)(a) of FOIA in relation to this request this could result in some CSOs being unwilling – or at least less willing – to offer to undertake the delivery of such programmes in the future. Moreover, the Commissioner also accepts the premise of the Council's

argument that its ability to deliver Prevent programmes would be undermined by such an outcome.

26. In reaching this conclusion the Commissioner acknowledges that there is some information in the public domain about the work the organisation in question does in relation to Prevent. In particular, she has noted the content of the tweet cited by the complainant. However, the Commissioner accepts the Council's point that this tweet relates to a different period to that which is covered by the request. She also notes that of the other information in the public domain none of it relates to work undertaken in Redbridge. Therefore, by complying with section 1(1)(a) the Council would be revealing information about this organisation that has not previously been in the public domain. Consequently the Commissioner is satisfied that compliance with section 1(1)(a) would still be likely, despite the information already in the public domain, to put off other CSOs from offering Prevent training if they considered that their involvement with a particular local authority would be revealed in response to a FOI request.
27. With regard to the second argument, the Commissioner accepts that there is a risk of a geographical threat map being created through a series of FOI requests. Whilst complying with section 1(1)(a) in response to one request may not be particularly harmful in terms of undermining the delivery of Prevent in Redbridge, the risk of doing so comes through a series of FOI requests which allow a motivated individual with malicious intent to build up a detailed picture across London, or more broadly, across the UK of where dedicated Prevent training has been delivered by particular CSOs. Furthermore, the Commissioner accepts that such a process could undermine the effectiveness of the Prevent programme. For example, this would allow someone with the intention to do harm to identify either weaknesses in areas where there is little Prevent programme running, or conversely areas where a high level of Prevent work may indicate a high level of residents who may be targeted.
28. With regard to whether refusing to comply with section 1(1)(a) is *necessary* in order to protect national security, the Commissioner has concluded that it is. She has reached this finding given the cumulative risks posed by the Council of it doing so, ie the risk of fewer CSOs being willing to deliver Prevent programmes *and* the risk of a geographical threat map being created if the Council complied with these requests and confirmed whether or not it held the requested information.
29. In addition to these factors, in reaching this conclusion the Commissioner has also taken into account the importance of NCND provisions being applied consistently in order for them to be effective. That is to say there are situations where a public authority will need to

use the neither confirm nor deny response consistently over a series of separate requests, regardless of whether it holds the requested information. Otherwise, if the same (or same type of) requests were made on several occasions, a changing response could reveal whether information was held. The Commissioner considers that such concerns apply here and maintaining a consistent NCND position is both relevant and important in relation to both of the Council's arguments.

30. Finally, in reaching this conclusion the Commissioner wishes to emphasise that she has taken into account the complainant's submissions summarised at paragraphs 22 to 24. Whilst payments to any suppliers delivering Prevent training in Redbridge would (if any were incurred) be included in the Council's spending data, given the format in which this data is published the Commissioner is not clear that this would result in confirmation that a particular company had actually delivered Prevent training. Rather, publication would simply confirm that company X had been paid a certain amount. Whilst that payment could be related to Prevent related training, it could of course, depending on services offered by the company, be unrelated to Prevent training.
31. In terms of the publication of particular training opportunities, the Commissioner acknowledges that these are advertised locally. However, she would draw a distinction between the consequences of local flyers being distributed to advertise particular training opportunities and the consequences of complying with these FOI requests, and by implication the same or similar requests submitted to other local authorities. The availability of such flyers only provides a limited insight into the training provided by a particular company. Moreover, unless such flyers are shared online, it is not possible for anyone outside of the local area to establish which company is delivering such training. In contrast, by complying with FOI requests such as the ones which are the subject of this request local authorities make it much easier for motivated individuals to build up a geographical threat map and/or establish a much wider, and potentially national, picture of the CSOs involved in delivering such training.
32. The Commissioner has therefore concluded that section 24(2) is engaged.

Public interest test

33. Section 24(2) is a qualified exemption. Therefore, the Commissioner is required to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether the Council holds the requested information.

34. The complainant argued that there was a clear public interest in the disclosure of the requested information as it provides assurance that the Prevent agenda and contracts that are awarded are appropriate and effective.
35. The Council argued that it was clearly against the public interest to jeopardise the delivery of any counter-terrorism strategy, and, as a result jeopardise the national security of the UK and its citizens. It was therefore of the view that the public interest favoured maintaining the exemption contained at section 24(2) of FOIA.
36. The Commissioner agrees that there is a clear public interest in local authorities being open and transparent about how they deliver training within their area given the role that Prevent plays in UK's CONTEST strategy. Furthermore, the Commissioner acknowledges that in light of the arguably controversial nature of Prevent, the importance of such transparency should not be underestimated. However, the Commissioner agrees with the Council that there is a very strong public interest in ensuring that the national security of the UK is not compromised. Given the risks that complying with section 1(1)(a) in respect of these requests presents to the delivery of Prevent, not just in Redbridge, but more broadly, she has therefore concluded that the public interest favours maintaining the exemption contained at section 24(2) of FOIA.
37. In light of this finding the Commissioner has not considered the Council's reliance on sections 31(3) and 43(3) of FOIA.

Other Matters

38. The section 45 Code of Practice for FOIA explains that '*It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision.*' As noted by the complainant, in this case the same officer issued both the refusal notice and the internal review.
39. The Council explained to the Commissioner that the internal review was inadvertently allocated on the case management system to the officer who had responded to the original request. Although that officer conducted the review himself and prepared a response this response was sent to another manager for approval and this was granted prior to the internal review being issued. The Council confirmed that subsequent reviews requested by the complainant relating to further FOIs have been dealt with by an independent manager.

40. The Commissioner is satisfied by this explanation and accepts that the lack of independence in relation to this internal review was an isolated occurrence.

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: 0300 1234504

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.

Signed

Jonathan Slee
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