

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 August 2020

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about the effectiveness of government strategies for safeguarding vulnerable individuals from involvement in far-right and religious extremist threats. The Home Office confirmed that it held relevant information but it refused to disclose it, citing the exemptions at section 22 (Information intended for future publication), 24 (National security), 38 (Health and safety), 40 (Personal information) and 43 (Commercial interests) of the FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 22 and section 24 of the FOIA to refuse to disclose the requested information. However, by failing to respond to the request within 20 working days, the Home Office breached sections 1 and 10 of the FOIA.
3. The Commissioner requires no steps as a result of this decision.

## Background

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4. The request asks for information produced by the Behavioural Insights Team ('BIT'). According to its website<sup>1</sup>, the BIT is a social purpose organisation that generates and applies behavioural insights to inform public policy and improve public services. The BIT works in partnership with governments, local authorities, non-profits, and businesses to tackle major policy problems.
5. Originally part of the Cabinet Office, the BIT has been an independent social purpose limited company since 2014.
6. The Home Office's response refers to 'Prevent'. Prevent is a key part of the government's four strand counter-terrorism strategy (known as CONTEST) and aims to prevent people from being drawn into ideological radicalisation and extremism<sup>2</sup>.

## Request and response

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7. On 19 June 2019, the complainant wrote to the Home Office and requested information in the following terms:

*"(1) A copy of any document produced by the BIT [Behavioural Insights Team] containing the content and/or findings of the BIT Study and/or any analysis or evaluation produced by the BIT as part of or as a result of the BIT Study, including any annexes or exhibits to that document(s). This includes but is not limited to a written report, PowerPoint slides, or briefing notes.*

*(2) To the extent not disclosed under (1), a copy of the title and/or contents pages of any document produced by the BIT containing the content and/or findings of the BIT Study and/or any analysis or evaluation produced by the BIT as part of or as a result of the BIT Study.*

*(3) A copy of the evidence compiled by the BIT as part of the BIT Study, including but not limited to, data, records of interviews, completed questionnaires and notes from observational visits.*

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<sup>1</sup> <https://www.bi.team/>

<sup>2</sup> <https://www.gov.uk/government/publications/prevent-duty-guidance>

*(4) A copy of the Terms of Reference (or other equivalent document) provided to the BIT by the Cabinet Office and/or Home Office, which resulted in production of the BIT Study."*

8. The Home Office responded on 12 August 2019. It said that it did not hold the information requested at parts (2) and (4) of the request. For parts (1) and (3), it confirmed that it held relevant information created by the BIT relating to the Prevent strategy, but said that it was exempt from disclosure under sections 22, 24, 31 (Law enforcement), 38 and 43 of the FOIA.
9. The complainant requested an internal review on 30 September 2019. She questioned the Home Office's interpretation of the request, and challenged its application of the exemptions and its consideration of the public interest test.
10. The Home Office responded on 26 November 2019. It told the complainant:

*"The Prevent programme is a crucial part of the Government's strategy of tackling possible sources of terrorism in our education system. In challenging the ideology that supports terrorism and those who promote it, protecting vulnerable people, and by supporting sectors and institutions where there are risks of radicalisation, the Department demonstrates its commitment to its duty to protect national security and law enforcement and to minimise risks to public health and safety (including those participating in the Prevent programme)."*

11. The Home Office upheld its original response to the request.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 9 January 2020 to complain about the Home Office's response to the request.
13. During the Commissioner's investigation the Home Office withdrew its reliance on section 31 of the FOIA to withhold information. However, it introduced section 40(2) (Personal information) of the FOIA to withhold the names of individuals contained in the withheld information.
14. Following the combined cases of the *Home Office v Information Commissioner* (GIA/2098/2010) and *DEFRA v Information Commissioner* (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.

15. The analysis below therefore considers whether the Home Office was entitled to rely on the exemptions it cited. The Commissioner has also considered the timeliness of the Home Office's response to the request.
16. The Commissioner has viewed the withheld information.

## **Reasons for decision**

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### **Section 1 – interpretation of request**

17. The complainant has expressed the concern that the Home Office interpreted her request too narrowly.
18. The Commissioner notes that the complainant's concern is based around the general description that the Home Office gave her of the relevant information it holds. As the complainant has not had sight of it she does not know what it does and does not comprise.
19. The Home Office has confirmed that it has supplied to the Commissioner all the information it holds falling within scope of the request. Having inspected the information, which is voluminous, the Commissioner notes that it comprises evaluation strategies for individual, named projects, summaries and reports of individual results (including evaluations of the effectiveness or otherwise of individual projects), locations where delivered, numbers and profiles of attendees, survey data and resource materials. It also includes a draft research report. She is satisfied that the withheld information corresponds to the information specified in the request.
20. The Commissioner is satisfied from the breadth, content and volume of this information, and from the Home Office's assurances, that it has employed a reasonable interpretation of the request, and not one which was unreasonable or unduly restrictive.

### **Section 22 - Information intended for future publication**

21. The Home Office has applied section 22 to withhold a copy of a draft research report, "Insights from Evaluation of Prevent Community Projects".
22. Section 22(1) of the FOIA states that:

*"Information is exempt information if –*

*a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*

*b) the information was already held with a view to such publication at the time when the request for information was made, and*

*c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)."*

23. In order to determine whether section 22 is engaged the Commissioner has considered the following questions:

- When the complainant submitted the request, did the Home Office hold the report with an intention to publish it at some date in the future?
- If so, in all the circumstances of the case, was it 'reasonable' that the Home Office should withhold the information from disclosure until some future date (whether determined or not)?

24. It is important to note that while a public authority must hold the information with a view to its publication at the time of the request, the exemption does not require a set publication date to be in place. The date of publication does not need to be definite for the exemption to apply.

25. The Home Office has confirmed to the Commissioner that there was a settled intention to publish the information prior to the complainant's request being received. The Home Office evidenced this intention by providing three drafts of the report (one from 2019, and two from 2020) which it said showed that the draft report continued to be progressed towards publication. It also provided the Commissioner with internal correspondence which supported its claim that this continues to be the case, albeit the publication timetable has been affected by the impact of Covid-19 on resources. It said that it was currently working towards publication in October 2020, although this date might still be subject to change.

26. From the information it has provided to her, the Commissioner is satisfied that, at the time of this request, the Home Office did have a settled intention to publish the report. She is also satisfied that, given the sensitivity of the report's subject matter and the fact that it remains subject to active and ongoing internal consultation, the decision to withhold it until it is ready for publication was a reasonable one.

#### *Public interest test*

27. Having concluded that the exemption is engaged, the Commissioner has then considered whether the public interest favours the maintenance of this exemption or the disclosure of the withheld information.

*Arguments in favour of disclosing the information*

28. The complainant argued that there is a compelling public interest in allowing there to be public scrutiny of the Prevent strategy, including assessments of its effectiveness, in order to ensure any weaknesses are addressed. She also noted that there is a public interest in disclosure where significant public resources have been spent on interventions which may have been evaluated as ineffective.
29. She also said that, with a statutory review of Prevent due to be completed by August 2020<sup>3</sup>, there is a strong public interest in ensuring that the general public, policymakers and others can properly scrutinise the BIT's evaluations in order to make informed representations to the Independent Reviewer.
30. The Home Office recognised that there is a general public interest in transparency and openness in government. Such openness would increase public understanding and inform public debate. In the context of this request, there is a public interest in disclosing the evaluations of local prevent projects carried out by the BIT. Doing so would increase public awareness of the efforts of those supporting activities to prevent terrorism.

*Arguments in favour of maintaining the exemption*

31. The Home Office argued that publication at this stage would necessarily be in a redacted form, because the draft is still undergoing changes and will require clearance before publication. It did not consider there to be a public interest in the publication of an incomplete report before the draft has been fully scrutinised, checked and cleared.
32. The Home Office argued that the premature disclosure of information about the evaluations of local Prevent projects may lead to the misinterpretation of findings. There would be gaps in the draft report, and so public understanding of the findings may be impaired. The fundamental principles of research are to build transparency, further understanding and develop the evidence base. By releasing the report before it is finalised, the Home Office believed that these aims would be jeopardised.

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<sup>3</sup> The Commissioner understands that this timescale has since been delayed by the need to appoint a new Independent Reviewer to lead the review <https://www.gov.uk/government/collections/independent-review-of-prevent>

*Balance of the public interest*

33. The Home Office assessed that maintaining research integrity, and ensuring that information released is accessible, understandable and clearly imparts findings, is of overriding importance, and that in this instance, the public interest is best served by withholding the BIT's evaluation report of local Prevent projects, until such time as it is finalised and ready for publication.
34. The Commissioner considers that there is a clear public interest in openness and transparency surrounding the delivery of the government's Prevent strategy, particularly in light of the arguably controversial nature of Prevent. The ability of the public to critically evaluate its effectiveness is reliant on having access to qualitative data about its strengths and weaknesses.
35. The Commissioner has also had regard to the independent review of Prevent that is taking place. Disclosure of evaluative information about the Prevent strategy would help inform public engagement with that review.
36. However, the Commissioner notes that the public interest in scrutiny will be served to a large extent by the publication of the final report, which should take place later this year.
37. Conversely, should publication take place early, the Commissioner recognises that the unfinished document would contain gaps in information and elements which may subsequently be subject to change.
38. The Home Office has argued that, as such, it may have the capacity to mislead and that this would be an obstacle to public understanding, and would run counter to its intended purpose. The Commissioner's view on this is that where public authorities consider there to be a risk that information may be misinterpreted, it is for them to provide contextualising information, to aid interpretation. Nevertheless, she does accept that there is a strong public interest in ensuring that public authorities are able to provide accurate and reliable information in a controlled and efficient manner and that disclosure of the withheld information before completion, containing various gaps and information which may be subject to change, would not serve to significantly enhance the public's understanding of the area covered by the report. The sensitivity of the subject matter is also a reason why the Home Office should be permitted to manage its disclosure carefully.
39. In the circumstances of this case, the Commissioner considers that the public interest favours maintaining the integrity of the Home Office's report and facilitating public access to information which is complete, comprehensive and reliable. Her conclusion is therefore that the public



interest in maintaining the exemption is stronger than that in disclosing the information prematurely. It follows that she finds the Home Office was entitled to rely on section 22 of the FOIA to refuse to disclose the report.

### **Section 24(1) – National security**

40. The Home Office has applied section 24(1) to refuse to disclose the information which was not exempt under section 22 of the FOIA.
41. Section 24(1) provides an exemption from the duty to disclose information where this is required for the purposes of safeguarding national security. If the information falls within the exemption, it is then subject to the public interest test.
42. The FOIA does not provide a definition of national security but, based on previous tribunals<sup>4</sup>, the Commissioner considers it to mean the security of the UK and its people. It includes matters such as the protection of democracy and the legal and constitutional systems of the state; military defence; and co-operation with other states in combatting terrorism.
43. The Commissioner interprets “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. The Commissioner has issued guidance on the application of section 24<sup>5</sup>, and in practical terms this means:

*“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”.*

44. However, the effect does not have to be direct, or immediate.

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<sup>4</sup> Norman Baker v the Information Commissioner and the Cabinet Office (EA/2006/0045 4 April 2007); Secretary of State for the Home Department v Rehman [2001] UKHL 47

<sup>5</sup> [https://ico.org.uk/media/for-organisations/documents/1174/safeguarding\\_national\\_security\\_section\\_24\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section_24_foi.pdf)



45. The Home Office argued that disclosure would undermine national security by damaging the government's Prevent strategy. It said:

*"The principle reason why the Home Office considers that withholding the BIT reports is necessary for the purpose of safeguarding national security is the negative effect disclosure would have on the work of Prevent. Prevent works with a range of civil society groups to safeguard communities from radicalisation and equip them with the ability to challenge the ideologies promoted by terrorist and extremist groups... Prevent activity is targeted against those forms of terrorism that pose the greatest risk to our national security.*

*As part of its community support, Prevent supports groups across the country who work to counter radicalisation. Disclosure of evaluations of local Prevent projects would impact negatively on the delivery of Prevent by revealing details about organisations and individuals who are, or have been, engaged in the delivery and support of activities to prevent terrorism.*

*Some organisations are happy to be publicly linked to Prevent, but some are not. Some organisations would alienate their core audiences if they were known to work with Prevent, which is why it is important for the Home Office to seek to protect information regarding not just who works with Prevent, but how they work.*

*It is likely that the exposure of the level of activity undertaken by Prevent in some projects could deter future partners from working with Prevent, due to concerns about the effect this might have on their work, their interests and indeed their safety. This could damage our ability to counter narratives from terrorist or extremist organisations.*

*Although the reports may not seem sensitive in themselves, it could assist those motivated towards terrorism or extremism when pieced together with other information which they might be able to obtain. Disclosure of these reports would carry a non-negligible risk that determined individuals could use the information to undermine the Prevent programme, which would damage national security. Withholding is therefore, in our assessment, necessary for the purpose of safeguarding national security."*

46. The Home Office's position is, therefore, that disclosure of the withheld information would deter some individuals and groups from engaging with, or participating in, Prevent projects, which would reduce Prevent's effectiveness as a counter-terrorism tool. The Home Office also identified a risk that the information itself might be of use to someone actively looking to encourage extremist behaviour, when pieced together

with other information. The Home Office said that both outcomes would be highly damaging to national security.

47. Having viewed the withheld information, the Commissioner notes that it identifies the providers of individual Prevent projects, and also contains information from which it would be possible to build a detailed profile of attendees (including geographical location, sex and age profile data). The Commissioner understands that confidentiality and trust are key to the success of the Prevent strategy. Individuals and groups who engage with projects, either by helping to deliver them or by participating in them, must have confidence that their involvement will not be disclosed without their consent. If the perception took hold that involvement in Prevent projects could not be kept confidential, this would undermine the strategy and adversely affect its outcomes by creating tensions and weakening engagement. This would prejudice the effectiveness of the Prevent agenda as part of the government's counter-terrorist strategy, which would be highly likely to damage national security.
48. Furthermore, some of the information evaluates the effectiveness of individual projects. The Commissioner considers that, particularly where a particular Prevent project has been assessed as being ineffective, disclosure of information about this needs to be handled in a sensitive and managed way, to avoid individuals or groups who might deliver future sessions from being deterred from getting involved.
49. The Commissioner also considers that the withheld information would be of use to someone looking to undermine the Prevent strategy or to encourage extremist behaviour, such as by targeting geographical areas where particular approaches had been assessed as having been unsuccessful.
50. Taking all the above into account, the Commissioner is satisfied that, in this case, the Home Office has demonstrated that withholding the information is required for the purposes of safeguarding national security.

#### *Public interest test*

51. Having concluded that the exemption is engaged, the Commissioner has then considered whether the public interest favours the maintenance of the exemption or the disclosure of the withheld information.

#### *Arguments in favour of disclosing the information*

52. The complainant said that it is in the public interest that the government has an effective approach to countering extremism. It follows that there is a public interest in permitting scrutiny of that approach, particularly with regard to assessing whether the Prevent strategy is effective.

53. The arguments offered by the complainant at paragraphs 28 and 29 above, are also relevant here.
54. The Home Office recognised the general public interest in transparency and openness in government. Such openness will increase public understanding and inform public debate. In the context of this request, it acknowledged that disclosure would increase public awareness of the efforts and effectiveness of government strategies to prevent terrorism.

*Arguments in favour of maintaining the exemption*

55. The Home Office said that disclosing the withheld information would undermine efforts to protect national security. There is a strong public interest in not disclosing information which could prejudice national security and Prevent projects are targeted against those forms of terrorism that pose the greatest risk to the UK's national security.

*Balance of the public interest*

56. The Home Office concluded that the balance of the public interest lies in maintaining the exemption and withholding the information.
57. The Commissioner accepts that the FOIA gives individuals a right of access to official information with the intention of making public bodies more transparent and accountable. With that in mind, she recognises that disclosing the withheld information in this case would meet the public interest in transparency and accountability surrounding the expenditure of public funds on Prevent projects and evaluations as to their effectiveness.
58. However, balanced against this, she must consider whether disclosure would have any effects which would run counter to the public interest in safeguarding national security, and if so, whether they are outweighed by the benefits of disclosure.
59. The complainant has acknowledged that there is a public interest in the government having an effective approach to countering extremism. The Commissioner agrees with the Home Office that its Prevent strategy, which serves that very purpose, would be weakened if the withheld information was disclosed, and that this would be harmful to national security at a time when the national security level of risk, as set by the government, was assessed as 'substantial'<sup>6</sup>, meaning that a terrorist attack is likely.

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<sup>6</sup> <https://www.gov.uk/terrorism-national-emergency>

60. The Commissioner considers that it is clearly the case that the public interest in disclosure does not match the weight of the public interest in safeguarding national security. It follows that her conclusion is that the public interest in the maintenance of the exemption outweighs the public interest in the disclosure of the requested information. Her decision is therefore that the Home Office was entitled to rely on section 24(1) of the FOIA to refuse to disclose the withheld information.

### **Remaining exemptions**

61. The Commissioner is satisfied that all of the requested information is exempt from disclosure under sections 22 and section 24. Therefore, it is not necessary for her to consider whether the remaining exemptions cited by the Home Office also apply.

### **Section 1 – general right of access**

#### **Section 10 - time for compliance**

62. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
63. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
64. In this case the Home Office responded to the request 38 working days after the date it received it. The Home Office therefore breached sections 1(1) and 10(1) of the FOIA by failing to respond to the request within 20 working days.
65. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"<sup>7</sup> strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"<sup>8</sup>.

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<sup>7</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>8</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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66. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

67. 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.
68. 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 .....**

**Samantha Bracegirdle**  
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**Information Commissioner's Office**  
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