

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2023

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

Decision (including any steps ordered)

1. The complainant has requested, from the Home Office, two annexes that were withheld from a published summary of a report. The Home Office refused to provide them, citing sections 23(1) (Information supplied by, or relating to, bodies dealing with security matters), 24(1) (National security) and 31(1) (Law enforcement) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 23 of FOIA to withhold the annexes. No steps are required.

Request and response

3. On 20 January 2022, the complainant wrote to the Home Office and requested information in the following terms:

"In March 2021 the Home Office published a summary of the Independent Review of Serious and Organised Crime available here-

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/968765/Independent_Review_of_SOC.pdf

On page 2 it said:

"The terms of reference for the Review are at Annex A, the terms of reference for the advisory group are at Annex B, and a list of contributors and a summary of evidence reviewed is at Annex C."

While Annex A was published on pages 7 to 9, Annex B and C were accidentally left off.

Could you please send me Annex B and Annex C under the FOIA".

4. On 4 March 2022, the Home Office responded. It refused to provide the requested information, citing sections 23(1), 24(1) and 31(1) of FOIA.

5. The complainant requested an internal review on 21 May 2022, saying:

"... I do not believe the annex is exempt as according to the summary that was published it was due to be published as part of it and must have been left out as an oversight.

The annex would include the names of police chief constables and police and crime commissioners etc who helped with the review and these types of people would not be exempt under national security etc".

6. The Home Office provided an internal review on 14 June 2022, in which it maintained its original position. When doing so it clarified:

"Whilst Annexes B and C are referenced in the Executive Summary, it was not the intention to publish these and they do not form part of the Executive Summary itself".

Scope of the case

7. The complainant contacted the Commissioner on 12 September 2022, to complain about the way his request for information had been handled.

8. Following notification of the commencement of the Commissioner's enquiries, he sent in further grounds of complaint on 26 November 2022.

9. At the same time, the complainant asked that the Commissioner: "come back to [the complainant] before reaching [his] decision to allow [the complainant] to respond to any further arguments from the Home Office". The Commissioner has commented on this in "Other matters" at the end of this notice.

10. The complainant asked the Commissioner to consider the application of exemptions to refuse the request in full. The Commissioner will consider these below.

11. The Commissioner has viewed the full report and annexes.

Reasons for decision

Section 23 - Information supplied by, or relating to, bodies dealing with security matters

12. Section 23(1) of FOIA states:

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)”.

13. To successfully engage the exemption at section 23(1), a public authority need only demonstrate one of the following:

- that the information was supplied by any of the named security bodies, either directly or indirectly; or
- that the information relates to any of the named security bodies.

14. The ‘named security bodies’ are listed at section 23(3)¹ of FOIA.

15. If the requested information falls within either of the above classes, it is absolutely exempt from disclosure under FOIA. There is no requirement for the public authority to demonstrate that disclosure would result in harm and the exemption is not subject to the public interest test.

16. The Commissioner has previously considered a request for a copy of the whole review, ie not the available summarised version. The two annexes which are requested here form part of the body of that review.

17. In his decision IC-87061-N7Z6², the Commissioner found that the Home Office was entitled to rely on section 23 of FOIA to withhold the report in its entirety.

18. Based on the same rationale, rather than repeating the arguments, the Commissioner draws the same conclusion here. Section 23 is properly engaged.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/23>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022638/ic-87061-n7z6.pdf>

19. As the Commissioner is satisfied that section 23 applies to the report in its entirety, including the annexes, it has not been necessary to consider the application of the other exemptions cited by the Home Office.

Other matters

20. Although they do not form part of this notice, the Commissioner wishes to highlight the following.
21. In his grounds of complaint, the complainant asked the Commissioner to give him a further opportunity to provide his views following the Home Office's response to his enquiries.
22. As the Commissioner's complaints process is not an adversarial one, this is not something which is generally offered by the Commissioner, unless there is a particular point to clarify or where there is the potential to informally resolve a case, ie without the need for a decision notice.
23. The Commissioner encourages complainants to raise all their concerns when initially asking a public authority to undertake an internal review and, later, to clarify or expand on these when submitting a complaint for him to investigate.
24. Were a public authority to change its position during the Commissioner's investigation, then this may be a different matter, however, this has not happened on this occasion and the Commissioner did not consider it necessary to ask the complainant for any further input.

Right of appeal

25. 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

26. 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.
27. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
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SK9 5AF