

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 December 2010

Public Authority: Department for Business Innovation & Skills
Address: Kingsgate House
66 – 74 Victoria Street
London
Sw1E 6SW

Summary

The complainant asked the Department for Business Innovation & Skills (the “public authority”) to provide information relating to a statement he heard about universities working to prevent Islamic extremism. The public authority refused to disclose this using the exemptions under sections 24(1) (national security), 31(1) (law enforcement), 35(1) (formulation or development of government policy) and 38(1) (health and safety) of the Freedom of Information Act 2000 (the “Act”).

The Commissioner’s decision is that the exemption at section 24(1) is engaged and that the public interest in maintaining the exemption outweighs that in disclosure. Therefore he has not considered the applicability of the other exemptions. The complaint is not upheld.

The public authority’s handling of the request also resulted in breaches of procedural requirements of the Act as identified in this Notice.

The Commissioner’s role

1. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the “Act”). This Notice sets out his decision.

Background

2. The link provided in the complainant's request, as shown below, provides some background information in support of his request.
3. The following newspaper link, from an article dated the same day as the request, also provides further detail:

<http://www.guardian.co.uk/education/2010/feb/04/police-stationed-on-campuses>

4. The public authority also released the publication "*The Role of Further Education Colleges in Preventing Violent Extremism: Next Steps*" in February 2009, available via the link below:

http://www.bis.gov.uk/assets/biscore/corporate/migratedD/publications/1/17193_DIUS_Next_Steps

The request

5. On 4 February 2010 the complainant made the following information request:

"... your Minister of State for Higher Education and Intellectual Property (David Lammy) has made a statement to the BBC's Radio 4 on the fact that certain universities will be required to work closely with Special Branch and other police officers to prevent Islamic extremism.

Mr Lammy declined to provide a list of the universities thus targeted. (Source: <http://news.bbc.co.uk/1/hi/education/849...>)

I should ask you, under the Freedom of Information Act 2000, to release the list of universities targeted by this new scheme".

6. The complainant also advised that he was making the same information request to the Home Office and the Metropolitan Police Service.
7. On 8 March 2010, outside the statutory time for compliance, the public authority made an interim response. It subsequently made a full response on 12 March 2010. In this response it refused to provide the information stating that it was exempt under sections 24(1) (national security), 31(1)(a) (law enforcement), 35(1)(a) (formulation or

development of government policy) and 38(1)(a) and (b) (health and safety) of the Act.

8. On 16 March 2010 the complainant sought an internal review.
9. On 16 April 2010 the public authority provided an internal review. This upheld its previous determination.

The investigation

Scope of the case

10. On 22 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He raised no specific issues.

Chronology

11. On 1 September 2010 the Commissioner commenced his investigation. He asked the complainant to confirm that he wished him to investigate the public authority's withholding of the requested information; this was confirmed on the same day.
12. Also on 1 September 2010, the Commissioner commenced his enquiries with the public authority.
13. On 16 September 2010 the public authority provided its response.

Analysis

Exemptions

Section 24 – national security

14. Section 24(1) states:

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."

15. In the case of *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045) the Information Tribunal noted that it was

unable to find an exhaustive definition of 'national security' in either statute or judicial decisions, but it referred to a House of Lords decision (*Secretary of State for the Home Department v Rehman [2001] UKHL 47; [2003] 1 AC 153*) which made a number of observations on the issue:

- 'national security' means the security of the United Kingdom and its people;
- the interests of national security are not limited to action by an individual which can be said to be 'targeted at' the United Kingdom, its system of government or its people;
- not only military defence, but the protection of democracy and the legal and constitutional systems of the state, are part of national security;
- action against a foreign state may be indirectly capable of affecting the security of the United Kingdom;
- reciprocal cooperation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

Required to safeguard

16. The Commissioner takes the view that, for exemption to be 'required', the requested information must relate to national security, and there must be evidence that its disclosure would cause specific and real threats to national security. Furthermore, the Commissioner considers that there must be a pressing need for the information to be exempt.
17. Having considered the close link between information rights and human rights, the Commissioner considers that it is appropriate to consider the case law on Article 8(2) of the European Convention on Human Rights, which states:

"There shall be no interference by a public authority with the exercise of this right except such as...is necessary in a democratic society in the interests of national security..."

18. The European Court of Human Rights has interpreted 'necessary' as *"not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'"*. Accordingly, in the view of the Commissioner, necessity is less than absolutely essential but more than merely useful.
19. The public authority has argued that:

“Disclosure of the information you request may have the unintended consequence of displacing extremist activity elsewhere, which would further drive clandestine extremism ‘underground’. Anti-extremist measures run the risk of being seriously damaged and undermined by any disclosure which would potentially identify areas in which the authorities were focused on such extremist activity.

Confirming or identifying which universities are on the list would render national security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infrastructure of the United Kingdom and increase the risk of harm to the public”.

20. It further advised the Commissioner that:

“David Lammy, in making his statement, referred to the fact that the universities which are the subject of this scheme have been identified as being at ‘higher risk’ from extremists and this judgement is likely to draw (at least in part) on sensitive intelligence material. To disclose which universities are believed to be subject to such risk would risk exposing the extent to which the UK authorities (e.g. the police) are aware of the activities of certain groups who may be targeting specific universities, and this would encourage those groups to take steps to avoid further scrutiny. Any resultant loss of coverage could damage ongoing counter-terrorist operations, and therefore national security.

The identification of specific universities as being the subject of Special Branch attention may result in the efforts of extremists being diverted elsewhere (i.e. to other universities, which are not currently the focus of such attention, or to other fora in which they could attempt to recruit/ radicalise young people). This would render the counter-measure less effective, and therefore damage national security.

The identification of specific universities as being the subject of attention would necessarily also mean that a list of universities which are not currently the focus of Special Branch activity would also be disclosed. This may result in radicalisers seeking to become more active within those universities, safe in the knowledge that their activities have thus far gone undetected/ failed to meet the threshold for active engagement. This would also be damaging to national security as it would allow terrorists/ radicalisers to identify and target vulnerable areas (and people) more effectively”.

21. The Commissioner accepts that disclosure of the information in this case would provide extremists with a list which would undermine the purpose and integrity of the scheme in respect of highlighting those establishments which are considered most likely to be a harbour for extremist activity. By deduction this will also obviously allow those which are not targeted to be readily identified, which will be more likely to make them into viable targets for displaced extremist activity as suggested by the public authority.
22. Having considered the withheld information and the public authority's comments, the Commissioner is satisfied that retention of the information is 'required to safeguard' national security, since there is a specific and direct application to which such information might be put which could potentially be damaging to national security. The information therefore has the necessary quality to fall within the definition of section 24(1).
23. Since section 24 is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information"*.

Public interest arguments in favour of disclosing the requested information

24. The public authority has provided the following arguments in favour of disclosure:

"... there is a public interest in the transparency of Government policy and in this case providing assurance that the department and universities are appropriately and effectively engaging with the threat posed by violent extremism".

25. It also provided the Commissioner with the following arguments:
 - *There is public interest in the transparency of government policy and in this case in providing assurance that the government and affected universities are effectively engaged with the threat posed by extremism. However, the disclosure of the names of the actual universities currently covered by the scheme is not needed to satisfy this interest.*
 - *There is public interest in understanding how and where public funds are spent and disclosure of the list of universities would go some way towards furthering this interest.*

- *Disclosure of the names of the universities targeted by the scheme might further public participation in the debate on the radicalisation of UK universities but would not further the public understanding of the scheme.*
- *It could also be argued that disclosure would bring to light information affecting the safety of the public in the area of the universities on the list, but ... this would be more than offset by the adverse affects on the counter-measures in place and the increased risk to the safety of the public in other areas to which extremist activity would be displaced.*

Public interest arguments in favour of maintaining the exemption

26. The public authority has provided the complainant with the following arguments in favour of maintaining the exemption:

"... confirming or identifying which universities are on the list, would significantly increase the risks to individuals and the public at large. Such risks would, at best, lead to a loss of confidence in the public authority or its partners to protect the well-being of the community, and at worst, enable the commission of terrorist or other violent acts directly against individuals or groups. The security of this country is of paramount importance and we consider that the decision to divulge the information sought would place public safety and national security at considerable risk".

27. It also provided the Commissioner with the following arguments:

- *The scheme referred to is a relatively new one and the issue of extremism at some of the UK's universities that the policy is designed to address is still very much a live issue.*
- *It is overwhelmingly in the public interest that national security should be maintained and only overridden in exceptional circumstances.*
- *The scheme would become ineffective if radical groups were able to take steps to avoid detection of their activities. Resources would then be needed to develop an alternative policy to address this issue of national concern.*
- *Disclosure would result in an inefficient use of police resources as extremist activity moved to other areas not currently under observation.*

Balance of the public interest arguments

28. The public authority balanced the public interest as follows:

"... there is a greater public interest in safeguarding both national security and the integrity of investigations and operations in this highly sensitive area of extremism and terrorism prevention."

"In summary, as much as there is public interest in knowing that such anti-extremist activity is appropriate and balanced in matters of national security, the decision to withhold such information on national security grounds will only be overridden in exceptional circumstances. It is therefore our opinion that for the reasons given above, the balance of the public interest test for identifying or confirming which universities which will be receiving targeted support to help tackle violent extremism is not sufficiently made out".

29. The Commissioner accepts that there is a general public interest in disclosure and he therefore gives this argument some weight. Disclosure would provide new information to the public, of which very little is currently known, and could therefore further public debate.
30. He also accepts the view that there is public interest in understanding how and where public funds are spent and that providing more information about the number of universities involved with the scheme would go some way towards furthering this.
31. The public authority has also argued above that it understands how knowing which universities are involved could further public debate on the 'radicalisation' of UK universities, which the Commissioner also accepts. However, he also agrees with its counter-argument that knowing the specific establishments involved in isolation will not further understanding of the scheme. However, he believes that this argument against disclosure is weak, as further requests could be made if the information requested were to be made available.
32. The Commissioner also agrees that disclosure could reveal information which may have an impact on public safety and make the public more aware of potential extremist activity within the areas where they live. This could potentially aid the scheme by making the public more vigilant and could also serve to increase the public's participation in trying to halt the spread of extremism. Furthermore, disclosure would better inform the public by providing information which would indicate those areas which were thought to be most at risk from acts of extremism at any given time. The public would therefore be more

- aware of those areas thought to be at risk and would be able to take further precautions as necessary.
33. However, whilst he can understand the arguments in favour of disclosing the requested information, the Commissioner notes that there are very strong countervailing arguments to such disclosure.
 34. Although providing details of those universities which are considered to be at particular risk of radicalisation could better inform the public, this knowledge would also assist the extremist. The Commissioner believes that were an extremist to be made aware of which universities were being 'watched', then they too could either be more vigilant or simply halt efforts at locations where it was known that they are more likely to be observed.
 35. Although it may be of interest to the public to be made aware of those universities where the risk of extremism is deemed to be particularly high, the Commissioner believes that having a list of those universities would be of considerable benefit to an extremist or a group of extremists who wished to evade detection of their activities. Such activists would therefore be more likely to move elsewhere and any potential gain which the public would have had by knowing about the scheme would then be lost - as too would any advantage that the police may have had. Knowing that a particular university is being surveilled is very likely to make an extremist concentrate their efforts to a neighbouring establishment which is not covered by the scheme.
 36. The Commissioner also notes that this is a 'new' scheme, the request having been made on the day that its existence was made public. He finds this to be a particularly compelling argument against disclosure because there will not have been time for the scheme to have generated any of the expected benefits with the 'advantage of surprise'.
 37. As cited above, "...'*national security*' means the security of the United Kingdom and its people". The Commissioner is of the opinion that releasing the requested information would cause specific and real threats to national security. He believes that the information could be used by extremists to support and influence their activity. He therefore believes that any advantages gained by further informing the public would be significantly outweighed by the factors for protecting the public by maintaining the exemption. The complaint is therefore not upheld.
 38. As the Commissioner finds that the requested information is exempt by virtue of section 24(1) he has not gone on to consider the other exemptions cited.

Procedural requirements

Section 1(1) and 10(1)

39. Section 1(1) provides that-

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him”.*

40. Section 10(1) provides that-

‘... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.’

41. The information request in this case was made on 4 February 2010. The public authority failed to comply with section 1(1) until 8 March 2010. In failing to confirm or deny whether it held the requested information within 20 working days of receipt of the request, the public authority breached section 10(1) by virtue of section 1(1)(a).

Section 17(1)

42. Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.”*

43. In this case the public authority issued its refusal notice later than the 20 working day limit. Accordingly, the Commissioner finds a breach of section 17(1).

The Decision

44. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- it correctly withheld the requested information under the exemption at section 24(1).
45. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- in failing to confirm within 20 working days that it held the requested information the public authority breached section 10(1) of the Act;
 - in failing to issue an appropriate refusal notice within 20 working days it breached section 17(1) of the Act.

Steps required

46. The Commissioner requires no steps to be taken.

Right of Appeal

47. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 16th day of December 2010

Signed

**Jon Manners
Group Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**