

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 December 2010

Public Authority: Chief Constable of West Midlands Police
Address: Police Head Quarters
Lloyd House
PO Box 52
Colmore Circus
Queensway
Birmingham
B4 6NQ

Summary

The complainant requested information about the Channel project, which is a counter-terrorism project that aims to intervene and assist individuals who are at risk of becoming involved in violent extremism. The public authority refused the request and cited exemptions, including that provided by section 31(1)(a) (prejudice to the prevention or detection of crime) of the Freedom of Information Act. The Commissioner finds that this exemption was applied correctly and so the public authority is not required to disclose the requested information. However, the Commissioner also finds that the public authority did not comply with all of its procedural obligations under the Act in that it responded to the request late and did not provide an adequate explanation for the exemptions cited.

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.

The request

2. On 19 November 2009 the complainant made the following information request:

"(i) The number of referrals made to the Channel Project for vulnerable individuals at risk of violent extremism since its inception, per month they were referred to the Project;

(ii) the number of referrals who were

(a) under 16 years old; and

(b) under 12 years old at the time they were referred to the Channel project;

(iii) how many referrals were recorded by the police as being of Muslim persons and how many of non-Muslim persons;

(iv) how many referrals were found to have been genuinely at risk of becoming violent extremists and on what grounds such findings were made;

(v) with which other government agencies has information collected through the Channel Project been shared;

(vi) what evaluation of the outcomes of the programme has been undertaken."

3. The public authority issued its refusal notice on 19 January 2010, outside twenty working days from the date of the request. Requests (i) to (iv) were refused, with the exemptions provided by sections 24(1) (national security) and 31(1) (prejudice to law enforcement) cited. No subsection of 31(1) was specified. The public authority set out its reasoning as to why these exemptions were believed to be engaged, and why the balance of the public interest was believed to favour the maintenance of these exemptions.
4. In response to request (v), the public authority stated that the exemption provided by section 21(1) (information accessible by other means) was engaged. The complainant was advised where the information falling within the scope of this request could be accessed. In response to request (vi), the public authority stated that no information falling within the scope of this request was held.

5. On 28 January 2010 the complainant requested an internal review in relation to requests (i) to (iv). The public authority provided its review decision on 6 April 2010. The refusal under sections 24(1) and 31(1) was upheld. Again, the public authority did not specify a subsection for section 31(1).

The Investigation

Scope of the case

6. The complainant contacted the Commissioner's office in connection with this request on 22 April 2010. The complainant indicated that he did not agree with the citing of sections 24(1) and 31(1) in response to requests (i) to (iv). As the complainant specified only requests (i) to (iv) when requesting an internal review, requests (v) and (vi) are excluded from the scope of this case.

Chronology

7. On 12 November 2010 the Commissioner enquired whether the complainant wished to withdraw his complaint in light of the decision in another case (details below), but the complainant declined to do so.

Analysis

Exemptions

8. The complainant has made identical information requests to a number of police forces, all of which have cited similar grounds for the refusal of these requests. The Commissioner has issued a previous Decision Notice in relation to identical requests made by the complainant to the Metropolitan Police Service (MPS), which can be viewed at the address below¹.
9. In that case the MPS specified the exemption provided by section 31(1)(a) (prejudice to the prevention or detection of crime) and the Commissioner focussed on this exemption in that Notice. The conclusion of the Notice was that the exemption provided by section

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http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50308853.ashx

31(1)(a) was engaged and that the balance of the public interest favoured the maintenance of this exemption.

10. Whilst the public authority in this case did not specify a subsection of 31(1) in its correspondence with the complainant, the Commissioner considers it safe to assume that it would have cited 31(1)(a) had it been pressed on this point. For the same reasons as set out in his earlier Decision Notice, the Commissioner concludes in this case that the exemption provided by section 31(1)(a) is engaged in relation to requests (i) to (iv) and that the balance of the public interest favours the maintenance of this exemption. The public authority is not, therefore, required to take any steps.

The Decision

11. The Commissioner has decided that the public authority properly withheld the requested information by reference to section 31(1)(a).
12. However, it breached its procedural obligations under the Act as follows.
 - In failing to confirm or deny whether it held the requested information within 20 working days, it breached section 10(1).
 - In failing to issue a refusal notice within 20 working days, it breached section 17(1).
 - In failing to state which sub-section of section 31 it was relying upon, without providing rectification by the time of its internal review, it breached section 17(1)(b).

Steps required

13. The Commissioner requires no steps to be taken.

Other matters

14. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Part VI of the Act's section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt decision. As he has made clear in his 'Good Practice Guidance No 5', the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review or, in exceptional circumstances, 40 working days. In this case the public authority exceeded these timeframes. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the public authority fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to remind the public authority of the expected standards in this regard.

15. Paragraph 39 of the section 45 Code of Practice encourages authorities to provide a fair and thorough review of matters, including a fresh look at the application of exemptions. The outcome of the review in this case, as communicated to the complainant, was very limited and did not demonstrate that a full reconsideration of the factors had taken place. The Commissioner therefore considers that the public authority failed to conduct a genuine review in this case, and advises that it should ensure that future reviews are carried out in accordance with the guidelines in the section 45 Code of Practice and communicated in full.

Right of Appeal

16. 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.

17. 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**

Legal Annex

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.'

Section 10(1) provides that –

'Subject to subsections (2) and (3), 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.'

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.'

Section 17(2) states –

'Where–

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

(i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) *that the information is exempt information only by virtue of a provision not specified in section 2(3), and*

(b) *at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'

Section 17(3) provides that -

'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, 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 disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

Section 24(1) provides that –

'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.'

Section 31(1)(a) provides that –

'Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime'