

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

### **Decision notice**

**Date:** 3 February 2014

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

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

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1. The complainant requested information relating to Altaf Hussain and his political party in Pakistan, Muttahida Quami Movement. The public authority neither confirmed nor denied holding any information by virtue of the exemptions at sections 23(5), 24(2), 27(4), 31(3) and 40(5) FOIA.
2. The Commissioner's decision is that the public authority was entitled to neither confirm nor deny holding information within the scope of the request by virtue of the exemptions at sections 23(5) and 24(2).
3. The Commissioner does not require the public authority to take any steps.

## Background

4. The request relates to Altaf Hussain the leader of a political party in Pakistan formally known as Muttahida Qaumi Movement but commonly referred to as the MQM party. In May 2013 the Metropolitan Police launched an investigation in connection with alleged threats of violence made by Altaf Hussain against political opponents.<sup>1</sup> Related stories can be found on the BBC website.<sup>2</sup>

## Request and response

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5. On 8 June 2013 the complainant requested information from the public authority in the following terms:

*'Please could you kindly advise whether you hold information relating to Altaf Hussain who is a British Citizen and heads a party called the MQM which has offices in London in the following areas:*

1. *Altaf Hussain/MQM links to terrorism*
2. *Altaf Hussain/MQM links to ethnic violence*
3. *Altaf Hussain/MQM links to the collection of Extortion [sic]*
4. *Altaf Hussain/MQM incitement to violence*
5. *Has the Home office passed any information relating to the links to MQM/Altaf Hussain to terrorism to the Scotland Yard?*
6. *Has the Home Secretary chaired or been part of meetings relating to MQM/Altaf Hussain, if so can those meetings notes/minutes be released?*
7. *Has the home office received any letters from any other British department/foreign government/British MPs/Met Police concerning Altaf Hussain/MQM? If so can these be released?*

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<sup>1</sup> More details are available on The BBC website: <http://www.bbc.co.uk/news/world-asia-22559282>

<sup>2</sup> <http://www.bbc.co.uk/search/news/?q=altaf%20hussain&video=on&audio=on&text=on>

8. *Has there been any discussion of proscribing MQM as a terrorist organisation? If so can documents/minutes/notes be released?*
9. *Does the Home office hold any information relating to Altaf Hussain/MQM involved in money laundering?'*
6. The Commissioner understands that on 8 July 2013 the public authority wrote to the complainant and informed him that it needed more time to consider the balance of the public interest in relation to sections 24, 27 and 31.
7. On 2 August 2013 the public authority provided the complainant with a substantive response to his request. The public authority neither confirmed nor denied whether it held information within the scope of the request on the basis of sections 23(5), 24(2), 27(4), 31(3) and 40(5).
8. The complainant requested an internal review on 2 August 2013. The public authority wrote to the complainant on 12 September 2013 with details of the outcome of the review. It upheld the original decision.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 13 September 2013 to complain about the way the request for information had been handled.
10. The scope of the investigation was to determine whether the public authority was entitled to neither confirm nor deny holding any of the information requested.
11. The Commissioner would at this point like to stress that he is not personally aware whether or not the public authority holds any relevant information as he does not consider this necessary in order for him to make a determination in respect of the neither confirm nor deny (NCND) principles in this case.

### **Reasons for decision**

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#### Section 23 – security bodies and Section 24 – national security

12. Information relating to security bodies specified in section 23(3) is exempt information by virtue of section 23(1). Information which does not fall under section 23(1) is exempt from disclosure under section 24(1), if it is required for the purpose of safeguarding national security.

13. Sections 23(5) and 24(2) exclude the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under section 23(1) or 24(1) respectively.
14. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).
15. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.
16. As mentioned, the public authority explained that both sections 23(5) and 24(2) were engaged. The Commissioner does not consider the exemptions at sections 23(5) and 24(2) to be mutually exclusive and he accepts that they can be relied on independently or jointly in order to conceal whether or not one or more of the security bodies has been involved in an issue which might impact on national security. However, each exemption must be applied independently on its own merits. In addition, the section 24 exemption is qualified and is therefore subject to the public interest test.
17. The test as to whether a disclosure would relate to a security body is decided on the normal civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
18. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
19. There is clearly a close relationship between the public authority and the security bodies, particularly its statutory relationship with the Security Service. In light of the public authority's functions and the nature of the request (on the subject of terrorism and other criminal activity), the Commissioner finds that, on the balance of probabilities, any information, if held, could be related to one or more bodies identified in section 23(3) FOIA.

20. With regard to section 24(2), the Commissioner again considers that this exemption should be interpreted so that it is only necessary for a public authority to show either a confirmation or denial of whether requested information is held would be likely to harm national security. The Commissioner interprets the phrase '*required*' in the context of this exemption to mean '*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.
21. In relation to the application of section 24(2) the Commissioner notes that the First Tier Tribunal (Information Rights) has indicated that only a consistent use of a '*neither confirm nor deny*' (NCND) response on matters of national security can secure its proper purpose.<sup>3</sup> Therefore, in considering whether the exemption is engaged, and the balance of the public interest test, regard has to be given to the need to adopt a consistent NCND position and not simply to the consequences of confirming whether the specific requested information in this case is held or not.
22. The public authority explained that it considers the subject matter of the request to relate to section 24.
23. In the context of section 24 the Commissioner notes that the threshold to engage the exemption is relatively low. Furthermore, as a general approach the Commissioner accepts that withholding information in order to ensure the protection of national security can extend, in some circumstances, to ensuring that matters which are of interest to the security bodies are not revealed. Moreover, it is not simply the consequences of revealing whether information is held in respect of a particular request that is relevant to the assessment as to whether the application of the exemption is required for the purposes of safeguarding national security, but the consequences of maintaining a consistent approach to the application of section 24(2).
24. On this occasion the Commissioner is satisfied that complying with the requirements of section 1(1)(a) would be likely to reveal whether or not the security bodies were interested in the subject matter which is the focus of these requests. The need for a public authority to adopt a

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<sup>3</sup> See for example, The All Party Parliamentary Group on Extraordinary Rendition v Information Commissioner and the Foreign and Commonwealth Office – EA/2011/0049-0051

position on a consistent basis is of vital importance in considering the application of an NCND exemption.

25. The Commissioner is satisfied that the public authority is entitled to rely on both sections 23(5) and 24(2) in the circumstances of this case. He accepts that revealing whether or not information is held within the scope of the request which relates to security bodies would reveal information relating to the role of the security bodies. It would also undermine national security and for that reason section 24(2) also applies because neither confirming nor denying if information is held is required for the purpose of safeguarding national security.

### **Public Interest Test**

26. Section 23 is an absolute exemption and no public interest test is required once it is found to be engaged. However, this is not the case for section 24(2).

#### Public authority's arguments

27. There is a general public interest in openness and transparency in all aspects of government, including in this instance, information regarding Altaf Hussain and the MQM party that the public authority may have or may not have.
28. There is a public interest in understanding whether or not the public authority may have engaged with Altaf Hussain and/or the MQM in matters pertaining to national security. Given the key role of the public authority in protecting the public and safeguarding national security, and the level of media reporting on this subject, it may be argued that the public interest is in favour of confirming whether or not the public authority holds any information within the scope of the request. Confirmation or denial would allow the public to understand the extent of any knowledge the public authority may have of Altaf Hussain and the MQM party and would go some way towards assuring the public that any concerns raised have been dealt with in accordance with public expectations.
29. However, the above considerations have to be weighed against a very strong public interest in safeguarding national security. To confirm or deny whether any information is held within the scope of the request could undermine the government's ability to maintain national security by potentially revealing what is or is not known in relation to Altaf Hussain and other members of the MQM party. Safeguarding national security is of paramount importance.

*Balance of the public interest*

30. In addition to the general public interest in openness and transparency, the Commissioner agrees that confirming or denying whether any information is held within the scope of the request would go some way in assuring the public that the concerns raised in relation to Altaf Hussain and the MQM party have been considered by the public authority.
31. However, the Commissioner accepts that the public interest in protecting information required for the purposes of safeguarding national security is a very strong one. The public is aware that in May 2013 the Metropolitan Police launched an investigation following allegations against Altaf Hussain and the MQM party. The Commissioner believes that is sufficient to provide some assurance to the public that the concerns raised have not been ignored.
32. The Commissioner therefore accepts that in the circumstances of this case the public interest in protecting information required for the purposes of safeguarding national security outweighs the public interest in favour of confirmation or denial. He therefore finds that, in all the circumstances of this case, the public interest in maintaining the exemption at section 24(2) outweighs the public interest in complying with the duty imposed by section 1(1)(a).
33. In view of his findings, the Commissioner has not found it necessary to go on to consider the other exemptions cited.

## Right of appeal

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34. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

35. 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.
36. 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 .....**

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