

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2016

Public Authority: Chief Constable of Essex Police
Address: Essex Police Headquarters
PO Box 2
Springfield
Chelmsford
Essex
CM2 6DA

Decision (including any steps ordered)

1. The complainant has requested details about the number of referrals made by Essex Police to the counter terrorism service "Prevent". Essex Police would neither confirm nor deny holding information citing sections 24(1) (national security) and 31(1) (law enforcement). Essex Police also advised that disclosure could identify individuals although it did not cite the relevant exemption.
2. During the Commissioner's investigation Essex Police confirmed that it does hold information and wanted to rely on the sections already cited; it also added section 40(2)(personal information), which it later removed.
3. The Commissioner's decision is that section 24(1) is engaged and that the public interest favours maintaining the exemption. No steps are required.

Background

4. The request makes reference to "Prevent" which is a Government programme. The Government's Prevent Strategy can be found online ¹.
5. Reference is also made to "Channel"², a key part of the Prevent Strategy. It is a programme which focuses on providing support at an early stage to people who are identified as being vulnerable to being drawn into terrorism.
6. Some disclosure in relation to a similar request was made by the National Police Chiefs' Council. This can be found on their publication scheme³ and is referred to later in this notice.

Request and response

7. On 11 October 2015, the complainant wrote to Essex Police and requested information in the following terms:

"I wish to know the following, under the Freedom of Information Act:

1. In the past five years, can you tell me:

How many people have been referred to the police's counter terrorism service, Prevent, from:

Southend

Rochford

Castle Point

Basildon

Thurrock

And in Essex in total?

Please break it down year-by-year, ie 2015, 2014, 2013, 2012, 2011 etc.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf

³<http://www.npcc.police.uk/Publication/NPCC%20FOI/CT/111%202015%20Channel%20Referra%20Data.pdf>

2. In each of those six areas, in the past five years, how many people were referred to Prevent because of suspected or potential radicalisation?

Please break it down year-by-year, ie 2015, 2014, 2013, 2012, 2011 etc.

3. And in each of those six areas, in the past five years, how many people under the age of 15 were referred to Prevent?

Please break it down year-by-year, ie 2015, 2014, 2013, 2012, 2011 etc.

4. In each of those six areas, in the past five years, how many people under the age of 15 were referred to Prevent because of suspected or potential radicalisation?

Please break it down year-by-year, ie 2015, 2014, 2013, 2012, 2011 etc.

5. In the six past five years, what area of Essex has seen the most referrals to Prevent?"

8. Essex Police responded on 10 November 2015. It advised that it would neither confirm nor deny holding information, citing the exemptions at sections 24(1) and 31(1)(a) and (b) of the FOIA; these subsections do not provide for the exclusion to neither confirm nor deny.
9. Following an internal review Essex Police wrote to the complainant on 8 January 2016. It maintained its position.

Scope of the case

10. The complainant contacted the Commissioner on 29 January 2016 to complain about the way his request for information had been handled. He asked the Commissioner to consider the application of the exemptions cited.
11. There was some confusion regarding the exemptions being relied on because Essex Police advised that it would neither confirm nor deny holding information but it did not cite the applicable limb of the exemptions cited. The Commissioner therefore sought to clarify this.
12. Essex Police confirmed its position and wrote to the complainant, during this investigation, advising that it does hold information. It confirmed that it would not disclose the information requested by virtue of sections 24(1) and 31(1)(a) & (b) of the FOIA; at this stage it also added section 40(2).

13. The Commissioner queried reliance on section 40(2) and this was subsequently dropped.
14. The Commissioner will consider the application of exemptions below.

Reasons for decision

Section 24 – national security

15. Section 24(1) of the FOIA states that:

"Information which does not fall within section 23(1) [information supplied by, or relating to, bodies dealing with security matters] is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding the national security."

16. In broad terms, section 24(1) allows a public authority not to disclose information if it considers that the release of the information would make the United Kingdom or its citizens vulnerable to a national security threat.
17. The term "national security" is not specifically defined by UK or European law. However, in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as:
 - "national security" means the security of the United Kingdom and its people;
 - the interests of national security are not limited to actions by the individual which are targeted at the UK, its system of government or its people;
 - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
 - action against a foreign state may be capable indirectly of affecting the security of the UK; and,
 - reciprocal cooperation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

18. The exemption provided by section 24 applies in circumstances where withholding the requested information is "*required for the purpose of safeguarding national security*".
19. "*Required*" is defined by the Oxford English Dictionary as '*to need something for a purpose*'. This could suggest that the exemption can only be applied if it is absolutely necessary to do so to protect national security. However, the Commissioner's interpretation is informed by the approach taken in the European Court of Human Rights, where the interference of human rights can be justified where it is '*necessary*' in a democratic society for safeguarding national security. '*Necessary*' in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable. The Commissioner therefore interprets '*required*' as meaning '*reasonably necessary*'.
20. It is not necessary to show that disclosing the withheld information would lead to a direct threat to the United Kingdom. The Commissioner's approach is set out by the House of Lords in *Secretary of State for the Home Department v Rehman* (as referred to above). Lord Slynn found that:

"To require the matters in question to be capable or resulting 'directly' in a threat to national security limits too tightly the discretion of the executive in deciding how the interests of the state, including not merely military defence but democracy, the legal and constitutional systems of the state need to be protected. I accept that there must be a real possibility of an adverse effect on the United Kingdom for what is done by the individual under inquiry but I do not accept that it has to be direct or immediate."

21. The Commissioner therefore considers that safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent. Such matters would include the radicalisation of individuals who could, as a result, be intent on causing harm to both themselves and others.
22. As part of its considerations Essex Police liaised with National Counter Terrorism Police Headquarters (NCTPHQ) and was advised:

"It remains the case that disclosure of such low figures by force (especially in regards to children and at town level) would be prejudicial to law enforcement and national security should the information be used to undermine the supportive and preventative work of Channel and national confidence in it. There is no public interest in disclosing figures that may be used by those with the necessary intent to undermine the CT/policing effort, whether

figures are viewed as high or low for a given relatively small local area.

*Whilst the risk of actual correct identification of individuals **may** be low at force level (locally they would need to be assessed) it remains a very real possibility. I am also concerned there is a very real risk of misidentification amongst the community within the force area - particularly when those with the relevant investigative skills try and assess any TACT arrest information with possible public media output. Given the current security threat across the globe and within the UK at this given time, it cannot be in the public interest to disclose figures at this level which may be used to try and ascertain who within the local areas, (including those of school age) may or may not have been subject to a Prevent referral.*

... it is as concerning and prejudicial to the enforcement and national security to state the number of non-referrals (zero's) as much as it is concerning to state the low level data you have referred to me. It is not in anyone's interest for an FOIA disclosure to enable the public to start trying to work out which local communities receive no referrals as this may indicate that certain types of individuals activities may have gone undetected/unreported, all the while appreciating those referred and those who receive support from Channel are being supported and not criminalised in any way".

23. As mentioned in paragraph 6 above, some information has already been published, giving figures at a regional level. Essex Police has confirmed that its own figures are included as part of those for the Eastern region, which also captures referrals from Bedfordshire, Hertfordshire, Norfolk, Cambridgeshire and Suffolk police forces. The data published shows that the numbers of referrals are 15 for 2012-2013, 62 for 2013-2014 and 24 for 2014-2015. These represent the total figures for all six police forces which evidences that the figures for each force will, necessarily, be very small.
24. Hypothetically, Essex Police may have provided a zero return in respect of referrals, ie it may have made no referrals at all. Conversely, it may be the only force in that region which has made any returns meaning that the other five forces have made no referrals. Provision of the more detailed figures requested by the complainant would therefore provide intelligence to those seeking to radicalise others by allowing them to assess whether or not their activity either has, or is likely to, come to the notice of the police in any particular force in the Eastern region. And at a more local level (again hypothetically), were it known that there had for example been 10 referrals from Basildon and none from

Thurrock then any radicalisation-related activity occurring in Thurrock would clearly seem to be escaping police attention and could mean an increase in activity in that area or a change of tactic by the perpetrators in other areas.

25. Essex Police has also advised the Commissioner:

"Any data released could identify if the risk of identifying radicalisation in [area/s removed] is higher, perhaps due to greater awareness, than other areas of Essex or the Eastern Region and by releasing this level of detail it could encourage those looking to circumvent the Prevent process to direct their activity elsewhere. The UK is made up of "Hot Spots" which arguably change during time - something which our data identifies and it is important to realise this is not just about local data, as the whole UK picture should be taken into account.

The Essex data clearly shows the types of issues in relation to mosaic (Hot Spot) disclosures – The figures could show that either the referral system is working or there are genuinely no issues, but also tell those intent on radicalisation that those they target (radicalise) have not been identified or referred to the police.

It is hard to quantify the risks of disclosure, especially without releasing details of individual cases, but in the current climate we feel that any release at local level could be detrimental to National Security".

26. Essex Police also explained that Channel only operates in certain areas and that revealing the more localised statistics requested could lead to the identification of individuals and organisations that the force works with. This in turn could result in such work being put into jeopardy if those so minded wished to counter the work. It added that:

"This could threaten the successful delivery of Channel and the government's counter terrorism strategy and lead to the public being at increased risk from terrorism. There is also a potential for such data to be used to increase community tensions in an area which would not be in the public interest".

27. The Commissioner has viewed the information which is held by Essex Police. He is satisfied that this exemption is appropriately engaged on the basis that it is reasonably necessary for the purposes of national security. Unfortunately he is not in a position to be more descriptive regarding its content as this would in itself be harmful.

Balance of the public interest test

28. Section 24(1) is a qualified exemption. In order for Essex Police to rely on this exemption the public interest favouring maintenance of the exemption must outweigh the public interest in disclosure of the requested information.

Public interest arguments in favour of disclosure

29. Essex Police recognised that the public is entitled to know how public funds are spent and that disclosure would enable the public to see where public money is being spent. It also advised that disclosure would reassure the public that Essex Police is endeavouring to combat terrorism and radicalisation.
30. It added that releasing the information would enable the public to have some reassurance that the Government's Counter Terrorism strategy is 'robust' and acknowledged that:

"This is an issue high on the public agenda and therefore the release of this information would contribute to an informed public debate".

31. Essex Police further argued that providing the statistics would also help the public's understanding of Prevent activity over time and geographic area.

Public interest arguments in favour of maintaining the exemption

32. Essex Police advised that:

"Disclosure of the information would enable those intent on engaging in terrorist activities to determine on a National level which areas within the UK may be a vulnerable area to target".

33. It added that:

"Whilst there is a public interest in the transparency of policing operations, information gathering and in this case providing assurance that the police service is appropriately and effectively safeguarding those who are vulnerable to radicalisation and targeting the cells behind the radicalisation, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in the highly sensitive area of terrorism".

34. It also advised that regional statistics which have already been disclosed help inform the public and that the public interest does not require local authority level data.

Balance of the public interest

35. In cases where the Commissioner considers that section 24(1) is engaged, there will always be a compelling argument in maintaining the exemption as the preservation of national security is clearly in the public interest. For the public interest to favour disclosure there must be specific and clearly decisive factors in favour of that disclosure. Without such evidence the Commissioner is compelled to recognise the public interest inherent in the exemption and afford this appropriate weight.
36. The Commissioner has taken into account the public interest in the accountability and transparency of the practices of Essex Police and also recognises the public interest in learning more about the Prevent strategy and whether or not it is successful. This would educate the general public and help to ensure that it knows how to keep its actions within the limits of the law. The Commissioner is always sympathetic to such arguments which genuinely promote the accountability and transparency of public authorities in respect of their work and the decisions they make. In this case however these arguments cannot be reconciled with the necessary weight which must be given to maintaining the national security of the United Kingdom.
37. It is the Commissioner's view that the information held by Essex Police could clearly be open to misuse and be potentially damaging to the UK's national security. This is because the withheld information may indicate those areas where the Prevent strategy is successfully operating and, conversely, where it is not. Whilst a lack of data on referrals in a particular area may be because there is no radicalisation taking place in that area, it may equally be the case that the perpetrators in that area are evading official scrutiny; provision of the requested information may well assist those seeking to circumvent the Prevent strategy in gauging their success. Because they are low, the figures will identify the likelihood of referrals from other forces in the region too and have the potential to highlight whole force areas where activity may be escaping the notice of the police; such areas could, then be viewed as potential 'safe havens' for those intent on radicalising others.
38. When the public interest in transparency is weighed against that in the preservation of national security, the view of the Commissioner is that it is clearly the case that the balance of the public interest significantly favours maintaining the section 24(1) exemption.

39. Given that the Commissioner is satisfied that Essex Police can rely on section 24(1) as a basis for withholding the information sought he has not gone on to consider the application of section 31.

Right of appeal

40. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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
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