

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

### **Decision notice**

**Date:** 10 November 2016

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

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

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1. The complainant requested a list of film and television projects the Home Office had communicated with during the period 2013 to 2015. The Home Office refused to confirm or deny whether it held this information and cited the exemptions provided by the following sections of the FOIA:  
  
24(2) (national security)  
  
38(2) (health and safety)  
  
43(3) (prejudice to commercial interests)
2. The Commissioner's decision is that these exemptions are not engaged and the Home Office is now required to issue a fresh response to the request.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response that confirms or denies whether the requested information is held. If the requested information is held, this must either be disclosed to the complainant, or the complainant must be provided with a refusal notice that explains why the information will not be disclosed.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 6 October 2015 the complainant wrote to the Home Office and requested information in the following terms:

*"I understand there has been communication between the Home Office and film/TV drama projects concerning advice on storylines relating to terrorism investigations or storylines set within the Muslim community. I would like a list of film/TV projects the Home Office has communicated with during the period of 2013-15."*

6. The Home Office response to this request, which was not sent until the ICO had issued a decision notice<sup>1</sup>, was dated 4 March 2016. It refused to confirm or deny whether it held the requested information and cited the exemptions provided by the following sections of the FOIA:

24(2) (national security)

38(2) (health and safety)

43(3) (prejudice to commercial interests)

7. The complainant responded and requested an internal review on 7 March 2016. The Home Office failed to respond with the outcome of the review within a reasonable period.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 2 May 2016 to complain at that stage about the delay in the completion of the internal review. The Commissioner replied to the complainant and stated that, in view of the delays until that point this case could be progressed without waiting any longer for the Home Office to complete the review. The complainant confirmed on 7 June 2016 that he did wish to proceed with this case.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1560605/fs50608803.pdf>

9. The Commissioner subsequently advised the Home Office that, given it had been more than eight months since the complainant had made his information request and he had still not received the internal review outcome, the case was being progressed without allowing any further delay. The Commissioner comments further on the delays in this case in the 'Other matters' section below.
10. The following analysis covers whether the Home Office relied correctly on sections 24(2), 38(2) and 43(3) of the FOIA when refusing to confirm or deny whether it held the requested information.

## Reasons for decision

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### Section 24

11. The Home Office cited section 24(2), which provides an exemption from the duty confirm or deny where this is required for the purpose of safeguarding national security. This exemption is qualified by the public interest, which means that there are two stages to considering it. First the exemption must be engaged and, secondly, the balance of the public interests must be considered.
12. Turning to whether the exemption is engaged, the approach of the Commissioner to the word "required" as it is used in section 24 is that this means reasonably necessary. This means that the question here is whether it was reasonably necessary for the purposes of national security to refuse to confirm or deny whether the requested information was held.
13. The argument from the Home Office concerned the Government's counter-terrorism Prevent Strategy. Gov.uk describes Prevent as *"Prevent is part of our counter-terrorism strategy, CONTEST. Its aim is to stop people becoming terrorists or supporting terrorism"*<sup>2</sup>.
14. The Home Office stated that it had treated the request as specifically for communication with film or TV projects relating to Prevent. It referred to the existing negativity towards Prevent and argued that *"confirmation or denial as to whether the Prevent programme is engaging with film and*

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97976/prevent-strategy-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf)

*television projects is likely to lead to more negativity, thus undermining the aims and objectives of the programme”.*

15. The Commissioner's view is that this reasoning is relevant to section 24(2); undermining the work of Prevent would be harmful to national security. She also notes web-based research carried out in previous cases as evidence that Prevent is the subject of negative comment and opposition.
16. If it would be reasonable to expect that confirmation or denial would strengthen that negativity and opposition, this would be a basis for finding that the exemption is engaged. The next step is to consider whether there would be a causal link between disclosure of this confirmation or denial and the outcome predicted by the Home Office. This could be, for example, that the existing hostility to Prevent is made worse or is extended to more people.
17. The Commissioner's view is that disclosure of this confirmation or denial would not be likely to have any significant impact on attitudes towards Prevent. That hostility towards Prevent already exists and makes it more difficult for this programme to achieve its aims is not in doubt, but the Commissioner does not consider that provision of this confirmation or denial would have any significant impact upon attitudes towards Prevent. In particular, she does not accept that provision of the confirmation or denial would have any significant impact on the likelihood of individuals or organisations being likely to cooperate with Prevent.
18. As she does not accept that there would be any causal link between disclosure of the confirmation or denial and harm to the work of Prevent, the Commissioner's conclusion is that she does not agree that exemption from the duty to confirm or deny is reasonably necessary for the purpose of national security in this case. She finds, therefore, that the exemption provided by section 24(2) is not engaged. Having reached this conclusion it is not necessary to go on to consider the balance of the public interests.

### **Section 38**

19. Section 38(2) provides an exemption from the duty to confirm or deny where to do so would, or would be likely to, endanger health and / or safety. Similarly to section 24(2), this exemption is qualified by the public interest, meaning that the exemption must first be engaged, and then the balance of the public interests must be considered.
20. For the Commissioner to accept that endangerment to health or safety would be likely to result, there must be a real and significant, rather

than remote, chance of that outcome occurring. In this case the issue for the Commissioner to consider is, therefore, whether confirming or denying that the requested information is held would result in a real and significant likelihood of endangerment to the health and/or safety of any individual.

21. The argument of the Home Office concerned the possibility of harm to individuals as a result of their cooperation with Prevent being revealed. It stated that "*confirming or denying whether there has been any engagement or if there is a list of projects would potentially cause distress to individuals by exposing them to risk of harm by potentially revealing their involvement with the Home Office Prevent programme*".
22. The Commissioner notes that this reasoning is relevant to section 38 in that it concerns health and safety. However, the view of the Commissioner is that there is no real and significant likelihood of endangerment to health and safety as a result of disclosure of the confirmation or denial.
23. The reasoning of the Home Office is based on the notion that provision of the confirmation or denial could lead to the identification of those who had cooperated with Prevent. The view of the Commissioner, however, is that there is no possibility of any individual or organisation being identified as a result of confirmation or denial in response to the complainant's request. On this basis the Commissioner does not accept this reasoning from the Home Office and so concludes that this exemption is not engaged. It is again not necessary to go on to consider the balance of the public interests.

### **Section 43**

24. Section 43(3) provides an exemption from the duty to confirm or deny where to do so would, or would be likely to, prejudice the commercial interests of any individual. The process for considering this exemption is similar to section 38(2) in that there must be a real and significant chance of the prejudice occurring and the balance of the public interests must favour maintenance of the exemption.
25. The reasoning from the Home Office for the citing of this exemption concerned the potential for harm to the commercial interests of parties that had cooperated with Prevent. Again, this argument is based on the notion that it would be possible to identify parties that had cooperated with Prevent as a result of disclosure of the confirmation or denial. However, as covered above in relation to section 38(2), the Commissioner's view is that disclosure of the confirmation or denial would not lead to the identification of any party.

26. The conclusion of the Commissioner is that section 43(3) is not engaged and it is not necessary to go on to consider the balance of the public interests. In light of this conclusion and that above on sections 24(2) and 38(2), the Home Office is now required to issue a fresh response to the complainant's request.

### **Other matters**

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27. Having issued the earlier decision notice, the Commissioner has not found again in this notice that the Home Office breached the FOIA by failing to respond to the complainant's request promptly. She does, however, wish to record her concern at the delays in the handling of this request. The provision at section 17(3) to extend the time to consider the balance of the public interests, and the absence of a statutory time limit for internal reviews, are not an invitation for a public authority to extend indefinitely the time to deal with requests and should not be treated as such by the Home Office.
28. It is as a result of seeing too many examples of the Home Office failing to progress requests and internal reviews promptly that the Commissioner has raised issues relating to time keeping with the Home Office and why she continues to closely observe the performance of the Home Office in terms of timeliness. The Home Office must take appropriate steps to eliminate delays in its request handling.

## Right of appeal

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

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

30. 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.
31. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**