Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2016

Public Authority: Chief Constable of Merseyside Police
Address: Canning Place
Liverpool
Merseyside
L1 8JX

Decision (including any steps ordered)

1. The complainant has requested information about the number of referrals in respect of anti-fracking activism that Merseyside Police has made to the government counter terrorism programme, Channel. Merseyside Police would neither confirm nor deny holding information, citing sections 24(2) (national security) and 31(3) (law enforcement).

2. The Commissioner's decision is that section 24(2) is engaged and that the balance of the public interest favours maintaining the exclusion of the duty to confirm or deny whether information is held. The Commissioner does not require any steps to be taken.

Background

"Fracking"

3. Hydraulic fracturing, known as fracking, is a technique used in the extraction of gas and oil from deep underground shale rock formations by injecting water at high pressure. Various sites throughout the UK have been identified as potentially suitable for fracking.

4. The government considers fracking to be a key way in which the UK might meet some of its energy needs over the coming decades. Set against this, environmental groups, people living in affected areas and some MPs have voiced concerns about the environmental impact of fracking. Anti-fracking campaigners have exercised their right to protest at sites which are engaged in fracking activity and, while most protests

have been lawful, some arrests have been made[1]. The Commissioner therefore acknowledges that the debate around fracking is highly charged and that feelings run high amongst many of those who oppose it.

"Channel"

5. Merseyside Police provided the following description of the Channel programme:

> *"Channel is a key element of the Prevent strategy, which is a multi-agency early intervention approach to protect people at risk from radicalisation from being drawn into committing terrorist related activity before illegality occurs. Its primary purpose is the prevention of crime and takes effect when a trigger indicates that an individual or group has come to adopt increasingly extreme political, social or religious ideals and expressions of freedom of choice, the adoption of which may lead to illegality."*

Request and response

6. On 19 October 2015, the complainant wrote to Merseyside Police and requested information in the following terms:

> *"Please can you tell me the number of referrals made since January 2015 through the multi-agency counter-radicalisation 'Channel' process that were made specifically for individuals allegedly at risk of being drawn into 'extremism' through involvement in anti-fracking campaigns?"*

7. Merseyside Police responded on 2 November 2015. It would neither confirm nor deny holding the requested information, citing sections 24(2) and 31(3) of the FOIA.

8. Following an internal review, Merseyside Police wrote to the complainant on 2 March 2016. It maintained its position.

Scope of the case

[1] http://www.manchestereveningnews.co.uk/news/greater-manchester-news/anti-fracking-protests-number-arrests-reaches-6643876

9. The complainant contacted the Commissioner on 2 June 2016 to complain about the way his request for information had been handled. He challenged Merseyside Police's application of sections 24 and 31 to neither confirm nor deny ('NCND') whether it held information.

10. The Commissioner has considered Merseyside Police's reasons for issuing a NCND response to the complainant. She has done so without knowledge as to whether Merseyside Police actually does or does not hold the requested information and nothing in this decision notice should be taken as indicating that it does or does not hold such information.

Reasons for decision

11. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the information they have requested. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply; in certain circumstances, even confirming or denying that requested information is held can itself reveal information that falls under an exemption. A public authority may be able to use an exemption to refuse to confirm whether or not it holds information, if either confirming or denying would reveal exempt information in itself.

12. In this case, Merseyside Police argues that it is excluded from the duty to confirm or deny by virtue of sections 24(2) and 31(3) of the FOIA.

Section 24 - national security

13. 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."*

14. Section 24(2) states:

> *"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."*

15. Consideration of section 24(2) is a two-stage process. First, the exclusion must be engaged due to the requirement of national security. Secondly, this exclusion is qualified by the public interest, which means that confirmation or denial must be provided if the public interest in the maintenance of the exclusion does not outweigh the public interest in confirming or denying.

16. The Commissioner interprets "required" as used in section 24 to mean "reasonably necessary". The exemption will, therefore, be engaged if it is reasonably necessary for the purpose of safeguarding national security for the confirmation or denial to be withheld.

17. Merseyside Police explained its reasoning for citing section 24(2) to NCND as being that confirmation or denial would reveal operationally sensitive information about the scope of Prevent activities, resource allocation and prioritisation with regard to monitoring anti-fracking campaigns. Merseyside Police believed that revealing this information would be prejudicial to the maintenance of national security.

18. Merseyside Police said that although the request itself was for a number, any answer it gave would in fact disclose operational information far beyond that. If the information were held, confirming this would disclose that Prevent officers were targeting anti fracking events for extremist activities, and that maintaining a police presence at anti-fracking events was a Prevent priority. This information constitutes police intelligence and its disclosure would alert anyone engaged in extremist activities to the possible presence of Prevent activity in their community.

19. Prevent is a national counter terrorism initiative that is only implemented in certain police forces across the country. The same FOI request made to multiple forces could therefore identify how Prevent resources are apportioned across the country[2]. Anti-fracking campaigns organise around designated locations across the country; confirmation of the existence of the requested information would facilitate the mapping of Prevent capabilities alongside anti-fracking campaigns and, when incorporated into a radicalisation strategy, could be used by extremists to evade detection, thereby prejudicing national security.

20. Merseyside Police also considered that confirming whether or not it held the requested information could lead to any referred persons, and any referrers there might be, being identified. It said that the vast majority of activists of any type do not qualify for referral to Channel. Nationally, and across all areas of monitoring, only a small number of people are referred for support through the Channel program. Owing to the specific and narrow scope of the information requested in this case, if anyone had been referred the numbers referred would be likely to be low. Confirmation that information is held therefore carries the risk that anyone referred may be capable of identification by the communities

[2] The Commissioner notes that the complainant submitted this request to five police forces covering North West England, simultaneously.

within which they operate, as could the referrer and any associated partner agencies.

21. For an initiative that relies on trust and confidentiality, the risk of identification of referred/referring parties would discredit Channel as a reliable and credible early intervention initiative and place those identified at risk of harm. This would be likely to result in a loss of confidence amongst partner agencies and to discourage future referrals, with the risk that future extremist activities might pass unreported.

22. Furthermore, there is an additional risk that concerns about lack of confidentiality would lead to the withdrawal from Channel of people currently subject to ongoing intervention, which carries the risk of potentially reversing the effects of intervention and possibly leaving the individual vulnerable to returning to an extremist community. Merseyside Police considered this would clearly have a prejudicial impact on national security.

23. Merseyside Police also considered that loss of confidence in the confidentiality of the Channel programme amongst vulnerable individuals would filter out to the Prevent strategy as a whole, undermining its work in countering other areas of extremism, in other areas of the country.

24. Merseyside Police also stated that denying it held the requested information could lead someone to infer that either the techniques used by any extremists who may be operating in their area had not been detected by Prevent officers, or that Prevent officers were not monitoring anti-fracking campaigns. Such information would be of use to extremists wishing to evade detection by switching target locations or events, and changing techniques for radicalisation, ultimately rendering Prevent operational tactics ineffective and allowing for an environment where extremist activities could flourish without detection.

25. The Commissioner is satisfied that Merseyside Police has demonstrated that confirmation or denial would involve the disclosure of information beyond what has actually been requested. As to whether that disclosure would have an impact on national security, she has considered Merseyside Police's arguments (that it would facilitate extremist organising and would damage the effectiveness of the Prevent programme as a whole). She has also had regard for the government's guidance on Channel and notes that this explicitly ties the programme to the prevention of terrorism.

26. According to the gov.uk website[3], Channel 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. The programme uses a multi-agency approach to protect vulnerable people by:

    - identifying individuals at risk
    - assessing the nature and extent of that risk
    - developing the most appropriate support plan for the individuals concerned

27. Channel may be appropriate for anyone who is vulnerable to being drawn into any form of terrorism. Channel is about ensuring that vulnerable people of any background receive support before their vulnerabilities are exploited by those that would want them to embrace terrorism, and before they become involved in criminal activity.

28. It follows from this that, for a referral to be made to Channel, it must be suspected that an individual is at risk of becoming involved in terrorist related activity. Terrorism is clearly a matter which impacts on national security. Anything which interferes with or undermines the effectiveness of attempts to persuade people away from terrorism is likely to increase the likelihood of acts of terrorism being committed. The Commissioner is therefore satisfied that it is reasonably necessary for the purpose of safeguarding national security for the confirmation or denial to be withheld.

The public interest test

29. Section 24 of the FOIA is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in confirming or denying whether information is held outweighs that in issuing a NCND response.

Public interest in confirming/denying

30. Merseyside Police recognised that as a publicly funded body it was accountable to the public for the money it spends and the decisions it makes. It therefore accepted that there is some public interest in confirming or denying whether the information is held.

[3] https://www.gov.uk/government/publications/channel-guidance

31. Merseyside Police also accepted that there is a public interest in transparency surrounding policing operations with regard to counter terrorism. Confirmation or denial would give the public an insight (albeit limited) into its arrangements for combatting terrorism and radicalisation.

32. The complainant argued that there was a public interest in knowing the extent to which the state considers those who oppose fracking and are actively involved in the anti-fracking movement to be domestic extremists. Confirmation or denial would go some way to addressing that concern.

Public interest in maintaining a NCND response

33. Merseyside Police pointed to the real threat to public safety if the Prevent/ Channel programme is compromised. It believed that the information which could be inferred from confirming or denying would increase the likelihood of terrorist activity, which might eventually lead to criminal actions such as loss of life from a terrorist attack. It also referred to its concerns about the damage to the Prevent strategy as a whole (and the effect this would have) if it became know that information about it could be disclosed under FOIA. It argued that the limited benefit that confirmation or denial might bring was far outweighed by the need to safeguard national security and the integrity of the police operations in this highly sensitive area of counter terrorism.

Balance of the public interest

34. In cases where the Commissioner considers that section 24(2) of the FOIA is engaged, there will always be a compelling argument in maintaining the exclusion to confirm or deny as the preservation of national security is strongly in the public interest. For the public interest to favour confirming or denying there must be specific and clearly decisive factors in favour of that action. Without such evidence the Commissioner is compelled to recognise the public interest inherent in the exemption and afford this appropriate weight.

35. The Commissioner has taken into account the public interest in the accountability and transparency of the practices of Merseyside Police and also recognises the public interest in learning more about the Prevent strategy and who it targets. 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.

36. In this case, however, these arguments cannot be reconciled with the necessary weight which must be given to maintaining the national security of the UK.

37. It is the Commissioner's view that the disclosure of information that would take place by merely confirming or denying would be useful intelligence to anyone wishing to circumvent counter terrorism arrangements surrounding fracking and would be potentially damaging to the UK's national security. This is because disclosure could indicate areas where the Prevent strategy is successfully operating and, conversely, anywhere it is not. Whilst any 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. It would have the potential to highlight 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. The Commissioner also considers that there is merit in Merseyside Police's concerns about the wider impact on Prevent if it became known that information about it may be disclosed under FOIA. If vulnerable people were to be deterred from engaging with Channel because of concerns that their confidentiality might be compromised, the entire strategy, which addresses many forms of extremism, would be weakened and the risk of terror attacks increased.

39. In this context, when the public interest in transparency is weighed against the public interest in the preservation of national security, the Commissioner's view is that the public interest significantly favours maintaining the exclusion from confirming or denying at section 24(2).

40. Since the Commissioner is satisfied that in this case Merseyside Police may rely on section 24(2) to issue an NCND response, she has not gone on to consider its application of section 31(3) of the FOIA.

Right of appeal

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

42. 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.

43. 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 .....

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF