

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2017

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

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office (the "HO") about events at universities featuring hate speakers. The HO provided some information but withheld the remainder citing sections 31(1)(a) (law enforcement) and 38(1)(a) & (b) (health and safety) of the FOIA. The Commissioner's decision is that the HO was entitled to rely in part on the exemption at section 31(1)(a). However, she does not consider that any exemption cited is engaged in respect of the total number of events recorded for each year requested.
2. The Commissioner requires the HO to take the following steps to ensure compliance with the legislation.
 - disclose the number of events featuring hate speakers on university campuses recorded by the Extremism Analysis Unit in 2014, 2015 and 2016.
3. The HO 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 Act and may be dealt with as a contempt of court.

Request and response

4. On 23 January 2017 the complainant wrote to the HO and requested information in the following terms:

"The following press release states that the Extremism Analysis Unit recorded at least 70 events featuring hate speakers on university campuses in 2014, in September 2015.

<https://www.gov.uk/government/news/pms-extremism-taskforce-tackling-extremism-in-universities-and-colleges-top-of-the-agenda>

As such, please provide the following information:

Please state the number of events featuring hate speakers on university campuses recorded by the Extremism Analysis Unit in the following calendar years.

2014

2015

2016

Please provide a breakdown of these events by:

The university at which the event was held.

The number of events held at each university.

A description of each event.

Please provide information for the following calendar years.

2014

2015

2016

Please send me this information by e-mail".

5. The HO responded on 9 February 2017. It confirmed holding the information but refused to disclose it citing the following exemptions as its basis for doing so: 31(1)(a), 38(1) and 40(2) (personal information).
6. Following an internal review the HO wrote to the complainant on 28 April 2017. It maintained its position, clarifying that it was relying on both 38(1)(a) and 38(1)(b).

Scope of the case

7. The complainant contacted the Commissioner on 28 April 2017 to complain about the way his request for information had been handled. He provided reasons for disagreeing with the citing of section 31 and also advised:

"I would like to appeal the refusal of the Home Office to provide the number of events identified by the Extremism Analysis unit as

featuring hate speakers at university campuses, broken down by the number of events held at each university, for each of the 2014, 15 and 16 calendar years. I will not be appealing the rest of the request”.

8. As the complainant was no longer seeking that part of his request requiring a description of each event the Commissioner advised the HO accordingly. As a result of this it removed reliance on section 40 of the FOIA as it believed that no-one would be identifiable from the remaining information within the scope of the request.
9. Furthermore, the HO also indicated to the Commissioner that it may be willing to disclose the overall numbers of events recorded for each of the years requested. However, to date no such disclosure has been made and so the Commissioner has drafted this notice in the absence of any further disclosure.
10. The Commissioner will consider the application of exemptions below.

Reasons for decision

Section 31 – law enforcement

11. Section 31(1)(a) of the FOIA states 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”.*

12. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed but, before the information can be withheld, the public interest in maintenance of the exemption must outweigh the public interest in disclosure.
13. In order for section 31 to be engaged, the following criteria must be met:
 - the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant

prejudice which is alleged must be real, actual or of substance;
and

- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

14. The HO has advised that this exemption is engaged because disclosure would prejudice law enforcement by revealing information about the extent of the government's knowledge of extremist speakers and the techniques used to identify and gather information about them. At internal review it explained to the complainant that:

"The information, including a breakdown of the number of events by university, could be used by individuals or organisations to evaluate the degree of success concerning the Government's programme in identifying the actual number of events held at universities which featured hate speakers".

15. The complainant has argued:

"Simply providing the number of events by university cannot be said to have this effect on law enforcement, given that precise details of events that could have a realistic impact on law enforcement would not be released. Therefore, it seems that it would be contradictory for the department to rely on this exemption, when it has released far more comprehensive information in the past, and section 31 does not seem applicable to this case".

16. And, to partly counter this, the HO advised;

"We acknowledge that some information in this context has been made public (as referred to in the press release quoted in the original request and the internal review), we do not consider that this disclosure means that we must disclose the further information requested. From time to time the Government considers it necessary to provide information to inform the public, it does not necessarily follow that all similar information must be disclosed in response to a request made under the Freedom of Information Act if it is not in the public interest to do so".

17. The Commissioner understands the complainant's view. However, although some information has been previously released clearly this is limited. Such a release of information is done in a managed fashion in order to satisfy the public interest in the subject matter without revealing more detail than is necessary. This is not the same as a full

disclosure of all the relevant universities and the numbers and dates of all 'hate speaker' incidents that have been recorded.

18. Having viewed the withheld information, and in line with the explanation above, the Commissioner is satisfied that the HO has argued that the harm envisaged relates to the applicable interests in this exemption.
19. When considering the second bullet point, the Commissioner must be satisfied that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. She must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
20. The HO has explained that:

"Meeting the government's definition of extremism is not criminal in itself, but extremism is strongly associated with a range of criminal behaviours, including hate crime and terrorism. The information could be used to measure the success of the Government's monitoring of such events and could be used by extremist groups to evaluate the likelihood of detection.

Even if the information does not allow the identification of individuals, as in the now revised request, disclosure of a list of universities for the given years and the number of events could lead to assumptions by others that specific events that are known to have been held at the named universities were those that had been recorded by the EAU [Extremism Analysis Unit] as featuring extremist speakers. Information about speaking events identified as extremist could be used by opposing groups and individuals to target the universities identified".

21. Having considered all remaining parts of the request, the Commissioner is not convinced that the harm envisaged by the HO is the same for each element. From the arguments provided, she does not see how disclosure of the total number of events recorded for each of the three years stated would prejudice the prevention or detection of crime and, with the lack of any corroborative evidence, she is not convinced that the envisaged prejudice is real, actual or of substance. The complainant's request includes a link to information posted online through the Prime Minister's office which already discloses a figure for 2014 and, having viewed the withheld information, the Commissioner cannot envisage why figures for each of the three years requested could not also be disclosed. She does not agree that the headline figures themselves would, or would be likely to, cause any prejudice to the prevention or detection of crime and she does not find any arguments advanced by the HO to be persuasive in respect of this part of the information request. Accordingly she does not find section 31 to be

engaged in respect of the request to know the total number of events recorded for each of the three years stated.

22. In respect of the remaining information, ie the names of all universities and numbers of events at each, the Commissioner is satisfied that the HO has demonstrated prejudice which is not trivial or insignificant and that there is a causal relationship between its disclosure and the harm envisaged.
23. In relation to the third bullet point, the HO has stated that prejudice "would" occur. In considering this point, the Commissioner has had regard to the sensitivity of the information, its context and the envisaged harm which could be caused were it to be placed into the public domain. Taking all this into account, she is satisfied that the HO has demonstrated that prejudice would occur.
24. Having concluded that section 31(1)(a) is engaged the Commissioner has gone on to consider the balance of the public interest.

Public interest arguments in favour of disclosure

25. The complainant has argued:

"... there seems to be a strong public interest in releasing this information. Given the importance of tracking and tackling extremism, it is important that as much information about this issue is available for public scrutiny as possible. This is important for reasons such as ensuring that the public feels enough is being done to tackle extremism, and to feel that what is being done is proportionate. In addition, prospective university students may well want to know whether there is a problem with extremism at the university that they are applying to. These issues outweigh possible concerns for law enforcement, and if these do exist, they have already been exposed by the government's own release".

26. The HO has argued:

"Disclosing information relating to events featuring hate speakers would provide assurance that such events are being effectively monitored by the authorities, and would enable public debate about the nature of events deemed to be extremist. It would also raise public awareness of where such events were taking place around the country".

Public interest arguments in favour of maintaining the exemption

27. The HO has argued:

"Providing details of the events held on university campuses and the criteria used for recording such events would not necessarily provide assurance on what steps the Government is taking to counter or challenge the radicalisation of students. But it could undermine law enforcement by revealing details about the extent of HMG [Her Majesty's Government]'s knowledge of identified extremist speakers and the techniques used to gather information and produce analysis on them, including by the police, with whom the EAU will work closely. While individuals meeting the Government's definition of extremism have not necessarily crossed any criminal threshold, extremism is strongly associated with a range of criminal behaviors [sic], including hate crime and terrorism and the EAU's analysis may touch upon such behaviors [sic]"

28. It also drew reference to a previous decision notice which has been issued by the Commissioner on this subject matter¹. In respect of that decision, which asks for original data used by the Extremism Analysis Unit, it stated:

"That decision related to a request for similar information and our application of section 31(1)(a) was upheld by the Commissioner. The Commissioner noted that there is a public interest in becoming better informed about the issues relating to alleged extremist events being held on university campuses, but accepted that although there were sound arguments in favour of disclosure they did not have sufficient weight to override the prejudice to law enforcement that would arise through the disclosure of the operations of the relevant law enforcement agencies. We maintain that this is applicable in the case under consideration now"

29. Whilst the Commissioner accepts that her previous decision relates to similar subject matter, she also notes that the request in that case was considerably more detailed than this request - the complainant in this case is only asking for the names of the relevant universities and the number of events, some of this information already being in the public domain. Therefore, although she accepts that there is some relationship between the requests, the Commissioner does not afford this argument much weight due to the incomparable content of the requests.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/2013762/fs50636046.pdf>

Balance of the public interest

30. The Commissioner considers that appropriate weight must be afforded here to the public interest inherent in the exemption; that is, the public interest in avoiding likely prejudice to the prevention or detection of crime. The Commissioner considers it clear that there is a very substantial public interest in avoiding that outcome and that this factor therefore carries considerable weight.
31. She also finds the HO assessment that prejudice 'would' (rather than 'would be likely to') occur to afford strong weighting against disclosure.
32. The complainant's views above are noted and the Commissioner accepts the considerable public interest in tracking and tackling extremism. She fully agrees with the complainant that the public needs to feel assured that as much as possible is being done to counter extremism and that people need to feel safe. However, she is not convinced that disclosure of the remaining information will go far to meet this concern. The disclosure of the totals, which she has determined should be provided, would sufficiently inform the public about the extent of the issues without undermining what details are known by the EAU. In the Commissioner's opinion, the fact that such matters are being logged and monitored is reassuring in itself and goes some considerable way to satisfying the public interest without further disclosure.
33. The Commissioner also accepts the point made by the complainant that prospective university students may well want to know whether or not there is a problem with extremism at a university which they are considering attending. However, the fact that an event has been recorded at a university on one occasion does not necessarily mean that there is an on-going issue as it may have been a 'one off'; the data is only representative of past events and may not reveal anything which is currently an issue or which could be in the future. In addition, whilst such knowledge may operate as a deterrent for some students it may attract students with extremist views to either concentrate their efforts on attending only specific universities, or indeed to attend a different one if they think they are more likely to go undetected. It is also of relevance that the data requested is for a three year period, which is the typical length of a degree course. It may be the case that where a University had multiple events recorded, these may have been attributed to a single speaker who was on a course at that university. Once they complete their course, the events may well cease. Therefore, the Commissioner does not give the complainant's argument much weight as she considers that disclosure is of little relevance to prospective students and that the data could be open to misinterpretation.

34. The Commissioner accepts that the harm envisaged by the HO relates to the remaining information and that disclosure would reveal information which is not already in the public domain. Furthermore, she finds that its disclosure may be of benefit to those involved with arranging or participating in the events as it would 'tip off' the parties regarding what has been logged and what has remained unrecorded. This in turn could encourage further events at places where previous ones have escaped the attention of the EAU and not been reported to the relevant authorities.
35. The Commissioner does not agree that provision of the remaining information would be of greater public interest than that in protecting law enforcement by withholding details about the overall extent of knowledge about hate speakers at universities. It is also noted that some details have been provided already and a small number of universities have been named and the Commissioner considers that this managed disclosure goes a considerable way in serving the public interest on this subject matter.
36. Having taken the above in to account, the Commissioner is satisfied that, in this case, the public interest in maintaining the exemption outweighs that in disclosure of the requested information. She therefore finds that the HO was entitled to rely on section 31(1)(a) to withhold the remaining information.
37. In light of her findings on the application of section 31(1)(a) the Commissioner will now consider the application of section 38(1) to the information where she determined that this exemption was not engaged, ie the yearly figures only.

Section 38 – health and safety

38. Section 38 states that information is exempt if disclosure would, or would be likely to, endanger the physical or mental health, or safety of, any individual. This is a qualified exemption, and is therefore subject to the public interest test.
39. With regard to section 38(1)(a), the Commissioner's guidance² explains that endangering physical health usually means an adverse physical impact and often involves medical matters. Endangering mental health, on the other hand, implies as one would expect that the disclosure of information might lead to a psychological disorder or make mental

² <https://ico.org.uk/media/for-organisations/documents/1624339/health-and-safety-section-38-foia.pdf>

illness worse. In relation to section 38(1)(b), the guidance says that endangering safety is usually connected to the risk of accident and the protection of individuals. Information that could endanger an individual's safety could also endanger their mental or physical health. If so, both parts of the exemption may be relied upon.

40. The Commissioner's view is that the use of the term 'endanger' equates to 'prejudice' and therefore, like section 31 of FOIA, section 38 is subject to a prejudice test. This means that a public authority must be able to establish a causal link between the endangerment and disclosure of the information. Furthermore, the public authority must also show that disclosure would, or would be likely to, have a detrimental effect on the physical or mental health of any individual, or the safety of any individual. The effect must be more than trivial or insignificant.

41. When asking for an internal review the complainant argued:

"... as information detailed in the above press release shows, the identity of individuals the government considers to hold extremist views has already been published. This clearly introduces a risk that these persons could be targeted for these views. However, by publishing some of this information already, the government must have completed a risk assessment, and concluded that the release of this information would not put these individuals at risk sufficiently to outweigh the public interest in their identification. As such, section 38 cannot be applied in this case".

42. In providing its internal review the HO advised the complainant that:

"In this case, we consider that disclosure of information about specific universities and specific events could enable the identification of individuals, exposing them to the possibility of being targeted by extremists who oppose their views. We consider that the risk is high".

43. As mentioned in paragraph 9 above, during her investigation the HO advised the Commissioner that it was minded to disclose the yearly totals, albeit that this has not been realised to date. In its rationale for doing so, it explained that it considered that disclosure of the totals would not reveal personal data. Furthermore, as this would not involve disclosure of the universities themselves the Commissioner deduces that it would not be possible to identify any party from these figures and no university could be 'targeted' as none would be named.

44. Accordingly, the Commissioner is satisfied that the yearly figures do not constitute personal data and, because their disclosure is not associated with any particular university, then there can be no risk to any party from disclosure of these figures alone.

45. As section 38(1) only applies where disclosure could endanger the physical or mental health, or safety of, any individual, the Commissioner concludes that it is not engaged in respect of the annual figures.

Right of appeal

46. 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

47. 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.
48. 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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