

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2018

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

Decision (including any steps ordered)

1. The complainant requested information from the Home Office regarding details of reported incidents of hate crime. The Home Office refused to provide the information, citing the exemption at section 22 of the FOIA – information intended for future publication.
2. The Commissioner's decision is that the exemption is not engaged.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information to the complainant.
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 Act and may be dealt with as a contempt of court.

Request and response

5. On 22 October 2017, the complainant made the following request for information under the FOIA in the following terms:

"May I request the following information please, in respect of recorded crime for 2016–2017 only:

a) A version of table 'prc-hate-crime-open-data' restricted to offences for which the HODH flag 'Religion' (Code 19) has been set, with additional columns for the individual religion/belief flags (. Christian . Buddhist . Hindu . Jewish . Muslim . Sikh . Other . No religion . Unknown), showing the respective totals of recorded offences within each of these categories, and

b) another version of the same table, but further restricted to offences with Outcome Type=1 (Charged/Summonsed)."

6. The Home Office responded on 7 November 2017. It stated that the requested information was due to be published in autumn 2018, and that it was therefore exempt from disclosure under section 22 of the FOIA – information intended for future publication.
7. The complainant requested an internal review on 8 November 2017. Following the internal review, the Home Office wrote again to the complainant on 24 January 2018. It acknowledged that a public interest test should have been carried out when considering whether to apply the exemption initially, but, having reviewed its response and weighed the balance of the public interest, it maintained that the information was exempt from disclosure under section 22 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 26 January 2018 to complain about the way his request for information had been handled.
9. The Commissioner clarified the scope of the request with the complainant, who confirmed that he was seeking the information held for the financial year 2016–2017. It is normal practice for the Home Office to collect this type of data by financial year.
10. The Commissioner understands that the request refers to a table of information that was published by the Home Office in October 2017, shortly before the date of the request. The request is, essentially, for a more specific breakdown of the information shown on the table for 2016–2017, broken down by the particular religion of the victim, and showing where the outcome of the reported offence was "charged/summonsed". This information is not currently published on the table.

11. The following analysis covers whether the Home Office correctly withheld the information under section 22 of the FOIA.

Reasons for decision

Section 22 – information intended for future publication

12. Section 22(1) of the FOIA states that:

Information is exempt information if –

- a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - b) the information was already held with a view to such publication at the time when the request for information was made, and
 - c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
13. In order to determine whether section 22 is engaged the Commissioner has therefore considered the following questions:
- When the complainant submitted the request, did the Home Office intend the information to be published at some date in the future?
 - If so, in all the circumstances of the case, was it 'reasonable' that the Home Office should withhold the information from disclosure until some future date (whether determined or not)?

Was the information held at the time of the request with a view to its publication at a future date?

14. The Home Office confirmed that it held information falling within the scope of the request. It has explained that it was collected from police forces for the specific purpose of publication. It was collected under the Annual Data Requirement (a statutory requirement) and, on being asked to provide the data, Chief Constables were informed that it *"will be used to inform policy and stakeholders on the levels of police recorded hate crime, and will be published in the annual Home Office hate crime statistics publication"*.
15. The Home Office's position therefore is that the information was held at the date of the request with a view to its future publication.

16. The Home Office has explained that the information will be published to coincide with National Hate Crime Awareness Week 2018, which is scheduled to take place from 13-20 October 2018. It therefore considers that there is a settled intention to publish it and, moreover, a degree of certainty over the date.
17. The Home Office has also explained that the data for 2016-2017 was provided on a voluntary basis by a limited number of police forces (in contrast to the data for 2017-2018, which was provided on a mandatory basis) and that, consequently, the data which it holds falling within the scope of the request would go through certain processes before being published. Specifically, it has explained:

"the Department's pre-publication procedures... include internal consultation, and verification of accurate data with police forces... Early release of data could be misleading and would mean that once data have been reconciled with the police (which always leads to changes in the data) there would be two sets of figures in the public domain which would not benefit the user and could lead to confusion... it would not be in the public interest to potentially have two sets of figures in the public domain, as this would be misleading to the public."
18. The Commissioner understands from this that the Home Office has a concern about the information which was held at the date of the request being published in its current form.
19. For the exemption at section 22 to be engaged, the public authority must be able to demonstrate a settled intention to publish the information that has been requested, such as is held at the date of the request.
20. The Commissioner considers from the Home Office's explanation that there is no settled intention to publish what was held at the date of the request. The contents of the information appear very likely to change before publication, to such extent that the Home Office refers to a process that *"always leads to changes in the data"* and to *"two sets of figures"*.
21. The Commissioner is, therefore, not satisfied that the Home Office had a settled intention to publish the information sought by the complainant, and accordingly her decision is that the exemption at section 22 of the FOIA is not engaged.
22. It has therefore not been necessary for the Commissioner to consider whether it was reasonable for the Home Office to withhold the information under this exemption. However, she observes that the proposed timetable did not appear reasonable in this case in any event,

since there is no particular reason why the information should not be published until National Hate Crime Awareness Week 2018, an event which, while supported by the Home Office and police forces, is organised independently.

23. Having concluded that section 22 is not engaged, at paragraph 3 above the Commissioner now requires the Home Office to disclose the requested information.

Right of appeal

24. 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

25. 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.
26. 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

Ben Tomes
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