

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2018

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

Decision (including any steps ordered)

1. The complainant requested information relating to an extradition request he believed had possibly been made.
2. The Home Office refused to confirm or deny whether it held this information and cited the exemptions provided by sections 23(5) (information relating to or supplied by security bodies), 27(4) (international relations) and 31(3) (law enforcement) of the FOIA.
3. The Commissioner's decision is that the Home Office was entitled to rely on the exemption at section 23(5) to neither confirm nor deny whether it held information within the scope of the request which, if held, would be exempt by virtue of section 23(1) of the FOIA. She requires no steps to be taken.

Request and response

4. On 5 January 2018, the complainant wrote to the Home Office and requested information in the following terms:

"I would ask that you provide me with:

1. *The number of extradition requests made of England and Wales, by the Government of Bangladesh from 2009-2017;*
2. *Of those requests made, how many were made in each year within the parameters noted;*

3. *Of these requested, how many were certified by the Secretary of State;*
 4. *Of those certified, how many requests were the subject of a 'warrant for arrest';*
 5. *Of those subject to a warrant, how many proceeded to a 'full extradition hearing';*
 6. *Of those subject to a full hearing, how many cases had extradition approved by the presiding Judge; and*
 7. *Of those cases where extradition was approved following a court hearing, how many cases did the Secretary of State order extradition."*
5. The Home Office provided a response to the request on the 25 January 2018. It refused to confirm or deny whether the requested information was held and cited the exemptions provided by section 23(5) (information relating to, or supplied by, security bodies), 27(4) (prejudice to international relations) and 31(3) (law enforcement) of the FOIA.
 6. The complainant responded on the 26 January 2018 and requested an internal review. The Home Office provided an internal review on the 22 February 2018, it upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 5 March 2018 to complain about the way his request for information had been handled.
8. The Commissioner has considered below whether the Home Office is entitled to neither confirm nor deny holding any of the information requested.

Reasons for decision

Section 23 – information supplied by, or relating to, bodies dealing with security matters

9. Section 23(1) of the FOIA states that:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in sub-section (3).'

10. Section 23(5) of the FOIA states that:

'The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or related to, any of the bodies specified in subsection (3).'

11. The full list of bodies specified in section 23(3) can be viewed online.¹

12. Section 23(5) is engaged if the wording of the request suggests that any information falling within its scope would be within the class described in this section. There is no requirement to go on to consider what the results of disclosure of the confirmation or denial may be, nor whether confirmation or denial would be in the public interest as Section 23(5) is an absolute exemption and not subject to the public interest test set out in section 2 of the FOIA.

13. Furthermore, the Commissioner considers that the phrase 'relates to' should be interpreted broadly. Such an interpretation has been accepted by the First-Tier Tribunal (Information Rights) in a number of different decisions.²

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

² See for example *Dowling v Information Commissioner and The Police Service for Northern Ireland*, EA/2011/0118, paras 17 to 22.

14. In its submission to the Commissioner the Home Office referred to the Commissioner's own guidance³ in relation to section 23(5) and specifically paragraph 19 of the guidance stating the following:

"The request has to be 'in the territory of national security'. This means there has to be a realistic possibility that a security body would be involved in the issue the request relates to. There also has to be a realistic possibility that if a security body was involved the public authority the request is addressed to would hold information relating to its involvement."

15. The Home Office explained to the Commissioner that although it is not required to specify which of the security bodies is or are involved, both the original response and the internal review in this case referred to the National Crime Agency (NCA) as being one of the bodies listed in section 23(3). The Home Office explained that there is a realistic possibility that the NCA (or its predecessor organisations) would have been involved in extradition requests from a foreign government and that the Home Office would hold information relating to the involvement of the NCA, or directly supplied by the NCA, if there had been any request. It explained that if it was to confirm or deny that the requested information was held it would involve the disclosure of information which relates to a section 23(3) body and this is why section 23(5) is engaged.
16. In the complainant's internal review he explained that some information relating to extraditions was disclosed in response to a similar request made to the Home Office. The Commissioner would expect the Home Office to handle each request on a case by case basis and therefore does not need to look into the Home Office's handling of a similar request and what information was disclosed in that instance.
17. The Commissioner is satisfied that complying with the requirements of section 1(1)(a) would be likely to reveal whether or not security bodies were involved in extradition requests from a foreign government. Her conclusion is, therefore, that the exemption provided by section 23(5) of the FOIA is engaged. In light of her findings in respect of 23(5), the Commissioner has not gone on to consider the Home Office's reliance on sections 27(4) and 31(3) of the FOIA.

³ https://ico.org.uk/media/for-organisations/documents/1182/security_bodies_section_23_foi.pdf

Right of appeal

18. 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

19. 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.
20. 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

Deborah Clark
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