

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 July 2019

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

### Decision (including any steps ordered)

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1. The complainant has requested a presentation related to the Serious Violence Strategy from the Home Office (HO). The HO provided some information but refused to provide the remainder citing section 35(1)(a) (formulation of government policy) of the FOIA.
2. The Commissioner's decision is that section 35(1)(a) is engaged but that the public interest favours disclosure of the requested information. She requires the HO to take the following steps to ensure compliance with the legislation:
  - disclose to the complainant the information requested at part (1) of the request.
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.

## Background

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4. The complainant has explained that some of the information requested had previously been leaked to the press. He provided a related newspaper article<sup>1</sup>.
5. The withheld information is a 13 page presentation entitled '*SERIOUS VIOLENCE: Latest evidence on the drivers*' which the Commissioner has viewed. It is connected to the Government's 'Serious Violence Strategy'<sup>2</sup> ('the Strategy') which was published in April 2018.
6. The HO has advised the Commissioner that the presentation was written between December 2017 and February 2018, prior to the publication of the Strategy.

## Request and response

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7. On 12 April 2018 the complainant wrote to the HO and requested information in the following terms:

*"I request the following information from the Home Office:*

- 1. The full set of slides from the Home Office Analysis and Insight unit relating to its presentation on "Serious Violence: Latest evidence on the drivers".*
- 2. A list of other research from the Home Office Analysis and Insight unit.*
- 3. A list of other research conducted by, or commissioned by, the Home Office for its Serious Violence Strategy.*
- 4. Home Office research report on the economic and social costs of crime: Heeks, Reed, Tafsiri and Prince (2018) – referenced in the Serious Crime Strategy report on Page 106, Point 74.*
- 5. Home Office bespoke analysis of the Home Office Homicide Index - referenced in the Serious Crime Strategy report on Page 105, Point 57".*

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<sup>1</sup><https://www.theguardian.com/uk-news/2018/apr/08/police-cuts-likely-contributed-to-rise-in-violent-leaked-report-reveals>

<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)

8. The HO responded on 3 August 2018. It provided some information within the scope of the request but refused to provide the remainder. It cited the following exemptions as its basis for doing so: sections 22 (future publication) and 35(1)(a) (formulation of government policy) of the FOIA.
9. On 10 August 2018, the complainant sought an internal review in respect of part (1) of his request only. The HO provided the outcome of its internal review on 1 October 2018, in which it maintained that section 35(1)(a) applied to this part of the request.
10. During the Commissioner's investigation, after a considerable delay whilst it deliberated its position, the HO disclosed a small amount of the information from the presentation which had previously been withheld. The complainant remained dissatisfied.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 28 November 2018 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided on 11 December 2018.
12. The complainant's grounds of complaint relate only to the application of section 35(1)(a) to part (1) of his request. His grounds of complaint, as cited to the HO when requesting an internal review, were as follows:

*"(a) some of the arguments used against disclosure are generic ones which do not reflect the specific nature of the information requested.*

*(b) the material involved is presumably factual and analytical background information whose release would assist public knowledge and understanding and improve the state of the public debate on this important issue.*

*(c) The leak of only a few slides may have given a distorted and partial view of the 'factors which might be driving increases in serious violence'. Therefore disclosing the full set of slides will give a more rounded picture of the evidence. This important point does not appear to have been considered.*

*(d) I have not asked for the release of 'advice' from officials, or their 'views' on a course of action. The slides I have requested are, according to your own letter, a collection of evidence of the factors driving serious violence, which have helped to inform the policy you have published. The Government has repeatedly stated that it believes in evidence-based policy, therefore there is a strong public interest on a matter of concern and debate to disclose the evidence".*

13. The Commissioner will consider the citing of section 35(1)(a) for the withholding of the remaining information in part (1) of the request.

## Reasons for decision

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### Section 35 - formulation of government policy

14. Section 35(1)(a) of the FOIA provides that information held by a government department is exempt if it relates to the formulation or development of government policy.
15. The Commissioner takes the view that the formulation of government policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a minister. Development of government policy, however, goes beyond this stage to improving or altering already existing policy such as monitoring, reviewing or analysing the effects of existing policy.
16. The Commissioner compared the presentation's content with information she located using internet searches and was able to readily find a considerable amount of the content online. She queried this with the HO which responded saying:

*"... most of the ... information has subsequently been published but not in exactly the format [as the presentation] and not with the same accompanying commentary that we provided in the [presentation]. The Home Office took the view that as the way it was presented was different to how it was ultimately published, this constitutes the provision of additional insight for Ministers, which is why it was redacted along the lines of the 'safe space' rationale.*

*The slide show was one of a number of packs completed in the months prior to the publication of the strategy (Dec 17 to mar 18) designed to try and summarise various bits of evidence and analysis that ultimately ended up in the strategy, though often not in exactly the same format".*

17. With respect to the subject matter of the request, the HO did not specify to the complainant which policy the withheld information related to. In response to the Commissioner's enquiries it stated:

*"The information relates to all of the policies contained in the Serious Violence Strategy. In essence, this means policies relating to knife and gun crime, drugs (including their misuse and tackling County Lines) and acid attacks. The Home Office is also planning*

*new legislation and providing law enforcement with the additional tools they need to disrupt and prevent serious violence.*

*The introduction and Executive Summary of the 'Serious Violence Strategy' explains this in further detail:*

*[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)*

...

*The slide-pack aimed to provide both analysis and candid advice to Ministers about what that analysis might imply for policies to pursue within the violence strategy. There are around 61 commitments and actions within that strategy. Many of those have not yet been completed.*

*To help to put this into context, the 'Serious Violence Strategy' is the underlying focus. Within that strategy are contained policies relating to tackling County Lines drugs supply and the violence that often accompanies it; there are also policies relating to early intervention; and the provision of support for school-excluded children. Many of these policy commitments have not yet been completed. In order to formulate and develop these policies, there are many actions and commitments that have to take place; which will ultimately relate to the aforementioned policies being agreed.*

*Although the Serious Violence Strategy has now been published, the policies themselves are still being formulated, and the slides are a key part of that".*

18. In her guidance on section 35<sup>3</sup>, the Commissioner accepts:

*"Section 35 is class-based, meaning departments do not need to consider the sensitivity of the information in order to engage the exemption. It must simply fall within the class of information described. The classes are interpreted broadly and will catch a wide range of information".*

19. It is only necessary for the withheld information to 'relate to' the formulation or development of government policy for the exemption to be engaged. In accordance with the Tribunal decision in *DfES v*

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/2260003/section-35-governmentpolicy.pdf>

*Information Commissioner & the Evening Standard* (EA/2006/006, 19 February 2007) the term 'relates to' is interpreted broadly. Any significant link between the information and the process by which government either formulates or develops its policy will be sufficient to engage the exemption.

20. Although the complainant has argued that the arguments against disclosure used by the HO are generic, and that they do not specifically reflect the nature of the information requested, the Commissioner considers that the presentation 'relates to' the formulation or development of policy as it was created to summarise evidence and analysis that ultimately ended up in the Strategy. On that basis, she is satisfied that the exemption is engaged in this case.

#### *Public interest test*

21. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.
22. There is no inherent or automatic public interest in maintaining the exemption. While the information may be caught by the exemption at section 35(1)(a), the HO cannot withhold it unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
23. The Commissioner considers that public interest arguments under section 35(1)(a) should focus on protecting the policymaking process. This reflects the underlying purpose of the exemption.
24. The Commissioner's guidance on section 35 states:

*"Public interest arguments under the section 35 exemptions often relate to preserving a 'safe space' to debate issues away from external scrutiny, preventing a 'chilling effect' on free and frank views in future, and preserving the principle of collective responsibility".*

25. The Commissioner's guidance also states:

*"The relevance and weight of the public interest arguments will depend entirely on the content and sensitivity of the particular information in question and the effect its release would have in all the circumstances of the case."*

#### *Public interest arguments in favour of disclosure*

26. The complainant has argued that the requested information is presumably factual and evidence-based and that its release would assist

public knowledge and understanding and also improve the state of the public debate on the issue of increases in serious violence.

27. He added that the leak of only a small number of the slides means that the public may currently have a distorted view of "*factors which might be driving increases in serious violence*". In his view the full release would therefore give a truer picture.
28. The complainant has also argued that the HO itself has stated that the presentation is a collection of evidence of the factors driving serious violence and that these factors have in turn helped to inform the published Strategy. He is therefore of the view that, because the HO states that it believes in evidence-based policy, there is a strong public interest in disclosure of that evidence. He has also noted that he has not sought the disclosure of any 'advice' from officials or their actual 'views'.
29. The HO has argued:

*"There is a general public interest in providing greater transparency in order to make government more accountable to the electorate, which increases trust.*

*The Government went through a process of assessing the available evidence on factors which might be driving increases in serious violence. Interim findings were set out in a series of slide-packs, one of which is the pack requested. The conclusions of this assessment were published in the Government's Serious Violence Strategy on 9 April 2018. Release of the requested information could be said to provide more transparency on how evidence was used in the process of developing the strategy. Exposing this might impact positively on the public's view of using an evidenced based approach".*

#### *Public interest arguments in favour of maintaining the exemption*

30. The HO has argued that it requires a 'safe space' in order for its officials to extend full and proper consideration to the formulation and development of policy. It added:

*"This safe space allows for a considered assessment of the respective merits or de-merits of different courses of action, which is vital to the foundation and delivery of effective policy. Without the protection afforded by the safe space the policy development process would be markedly more difficult.*

*The impartiality of the civil service might be undermined if advice was routinely made public as there is a risk that officials could come under political pressure not to challenge ideas in the formulation of policy, thus leading to poorer decision making. This issue is*

*particularly relevant to the use of research evidence and analysis in the policy making process. Research evidence may not always align with the direction of policy and so is vulnerable to being marginalised”.*

31. The Commissioner notes that the request is for an evidence-based presentation rather than being advice to officials, the Strategy relating to that presentation having already been published at the time the request was made. Whilst there may have been debate between officials, and further correspondence or meetings following the presentation, any related information which may be held about that is not part of the request under consideration here.

32. The HO has also argued:

*“Allied to this it is important that officials, when discussing developing areas of Government policy, can feel unconstrained in putting forward their views without inhibition. There is an ever present risk that if information put forward as part of the policy making process is disclosed this might inhibit such dialogue in future.*

*Unless these considerations are protected there is likely to be a negative effect on the conduct of good government. If the public interests outlined above cannot be protected, there is a risk that decision-making will become poorer and will be recorded inadequately”.*

33. However, the Commissioner has not afforded these arguments any weight on this occasion as the request does not ask for any officials’ views nor does it ask for details of decision-making or a record of any such decisions.

#### *Balance of the public interest*

34. The Commissioner is satisfied that the exemption at section 35(1)(a) is engaged as the HO has advised that the presentation was completed prior to the Strategy being published and that it was designed to summarise evidence and analysis that ultimately ended up within the Strategy. However, there is no inherent or automatic public interest in maintaining this exemption. While the information may be caught by the exemption at section 35(1)(a), the HO cannot withhold it unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

35. The weight to be attached to the public interest arguments will depend entirely on the content and sensitivity of the particular information in question and the effect its release would have in all the circumstances of the case.



36. More often than not, in the Commissioner's view, the enactment of a policy signals the end of the policy formulation or development process. She considers that, in most cases, the formulation or development of policy is likely to happen as a series of discrete stages, each with a beginning and end, with periods of consultation and implementation in between. She does not accept that there is inevitably a continuous process or seamless web of policy review and development.
37. In this case, while the Commissioner accepted that the withheld information *relates* to a policy making process whereby she found the exemption was engaged, she must also take into account any evidence available to her which suggests that the withheld information relates to an ongoing, live policy making process.
38. The HO has advised that the presentation relates to all of the policies covered in the Strategy, ie knife and gun crime, drugs and acid attacks. It has advised that although the Strategy has been published, these associated policies are still being formulated, and the presentation slides are a key part of that process. It has further advised that new legislation is being planned albeit it doesn't clarify what this is or how the presentation itself has any direct bearing on this.
39. The HO argues that the presentation aimed to: "*provide both analysis and candid advice to Ministers about what that analysis might imply for policies to pursue within the violence strategy*". However, whilst it depicts some analysis of evidence, the Commissioner does not consider that the requested information here can be categorised as 'candid advice'. In her view it is a presentation of factual and evidence-based findings, much of which the HO has already acknowledged is available in the public domain. Whilst the presentation is worded differently, and generally less formally than the Strategy, its content is generally reflected with the body of that Strategy.
40. It is not clear whether the HO is trying to 'protect' either the way it has presented the information to its Ministers or the evidence-based findings themselves. Presuming it is the information itself, as the Commissioner can see little harm in disclosing the format of how such information is delivered to an audience, when, as already recognised by the HO, most of this has now been published.
41. The HO has confirmed to the Commissioner that the presentation was completed prior to the Strategy and that it was designed to try to cover various pieces of evidence and analysis that ultimately ended up in the Strategy. In the Commissioner's view, it therefore seems that the content of the presentation must necessarily be included in the Strategy in one form or another, albeit the wording may not be a direct copy from one to the other. If some of the content of the presentation is not in the Strategy itself, the HO has not identified what it considers this to be,

despite ample opportunity to do so, and has only argued that the information is presented 'differently' within the presentation itself and that this is where the harm in disclosure lies.

42. There is obviously a strong public interest in assuring that the evidence which was given to Ministers, and any other interested parties, when the presentation was made, is accurately reflected in the subsequent Strategy which was provided for the general public to view and consider. There is also a strong public interest in the HO being able to evidence how initial evidence was subsequently collated and then fed into the Strategy.
43. Noting the arguments against disclosure, the Commissioner agrees with the complainant that they are generally not specific to the presentation itself and are generic in nature.
44. Having viewed the information and considered the arguments, the Commissioner is not satisfied that the HO has demonstrated that the weight of the public interest in maintaining the exemption outweighs the public interest in disclosure in this case.
45. The Commissioner's decision, therefore, is that the HO was not entitled to withhold the information by virtue of section 35(1)(a) of the FOIA.

## Right of appeal

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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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**