

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 02 July 2019

Public Authority: Civil Aviation Authority
Address: Aviation House
Gatwick Airport South
West Sussex
RH6 0YR

Decision (including any steps ordered)

1. The complainant submitted a request to the Civil Aviation Authority (CAA) seeking information about security checks. The CAA confirmed that it held some information falling within the scope of the request but sought to withhold this on the basis of section 24 (national security) of FOIA. The Commissioner's decision is that the CAA correctly applied section 24(1) of the FOIA to withhold information. The Commissioner does not require the CAA to take any steps.

Request and response

2. On 2 November 2018 the complainant made the following request for information:

*'1. The number of people seeking employment at each UK airport who are the subject of Criminal Record Checks, Counter Terrorist Checks and National Security Vetting during each of the past 10 years.
2. The number of people failing each of the above checks during each of the last 10 years.
3. The maximum length of time it takes for each of the above checks to be completed.*

Please provide the information in table form, breaking down the information by each airport, each type of check and each year. If you do

not hold this information, please could you identify which public body or organisation does hold this information.'

3. On 29 November 2018 the CAA explained that the checking of criminal records of individuals seeking employment at UK airports is part of a "background check", which is the responsibility of employers and airport operators and therefore it does not hold some information. It also provided links to information in the public domain and confirmed it did not hold any information relating to the turnaround times for obtaining overseas Criminal Record Certificates.

4. The CAA explained that since 1 April 2014, it has been responsible for granting or refusing Counter-Terrorist Checks (CTCs) of persons in certain aviation roles. CTCs are one of three levels of National Security Vetting (NSV) and is the only level of NSV required by regulation for certain activities and functions in the aviation industry:

'The CAA believes that the disclosure of information relating to National Security Vetting has the potential to be damaging to national security. Revealing details of the National Security Vetting process beyond that which we publish on our website, and that which is published by the Cabinet Office and UK Security Vetting on the gov.uk website, including revealing details of the volume of applications or refusals, provides the opportunity to attempt to identify and / or exploit perceived vulnerabilities in the UK's security vetting procedures.'

5. It therefore refused to provide the information citing Section 24 – national security- of FOIA.

6. On 30 November 2018, the complainant requested an internal review. He refined his request to:

'the number of people seeking employment at each UK airport who are a) subject to Counter Terrorist Checks during each of the past 10 years and b) the number of people failing such checks at each UK airport during each of the past 10 years.'

7. On 7 January 2019 the CAA provided the outcome of the internal review. It explained that it had little information on CTCs before 2014 and that its information was not broken down by each UK airport. It had consulted colleagues at the National Security Liaison Group (NSLG), which confirmed that, in their opinion, the CAA was correct to exempt from disclosure under Section 24 of the FOIA.

Scope of the case

8. On 20 February 2019 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
9. The Commissioner has therefore considered whether section 24(1) of FOIA has been applied correctly to withhold the information requested on 30 November 2018.

Reasons for decision

Section 24 – National security

10. Section 24(1) of the FOIA states:

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

11. The Commissioner’s interpretation of “required” is taken by the approach in the European Court of Human Rights where interference to human rights can be justified where it is necessary in a democratic society for safeguarding national security. ‘Necessary’ in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable. ‘Required’ in this context is therefore ‘reasonably necessary’. It is not sufficient for the information sought simply to relate to national security; there must be a clear basis that disclosure would have an adverse effect on national security before the exemption is engaged.
12. It is not necessary to show that disclosing the information would lead to an immediate threat to the UK, the exemption can be engaged to prevent a disclosure that would have adverse consequences. Safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent.

The complainant’s view

13. The complainant said that in his view the release of this limited information would not damage national security. He was not seeking information on the nature of the vetting itself, just the numbers of those that fail. He referred to a decision notice that was not upheld on appeal: <https://ico.org.uk/media/action-weve-taken/decision-notices/2009/505218/FS50178276.pdf>. This decision notice is mentioned in the ICO guidance https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section

[24 foi.pdf](#) that there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged.

The CAA's submission

14. The CAA said that revealing details of the National Security Vetting process beyond that which is already published on its website, and that which is published by the Cabinet Office and UK Security Vetting on the gov.uk website, including revealing details of the volume of applications or refusals, *'provides the opportunity to attempt to identify and exploit perceived vulnerabilities in the UK's security vetting procedures. If information, however limited, relating to security vetting processes and outcomes were to be made public there is a live risk that terrorists could identify ways to circumvent security procedures and use them to carry out potentially successful acts of terrorism.'*
15. The CAA consulted the NSLG about its views and the NSLG's policy that certain information should not be discussed in the public domain. This includes:
 - Details of how the NSV process works at a tactical level (e.g. what questions are asked of applicants, expected time taken per applicant, or for what specific jobs or purposes clearance is being given).
 - Details of how the NSV process works at a strategic level (e.g. how many clearances are issued either by department or in total, or what departments/agencies perform which elements of NSV).
 - Details of refusals under NSV (e.g. how many or what proportion of applicants are refused, or for what reasons).
16. The CAA provided the Commissioner with the withheld information, which relates to the numbers of applicants and refusals.

The Commissioner's view

17. The Commissioner has viewed the withheld information and the published links on this matter. She notes that details of the aviation roles requiring CTCs and the number of applications are not published. She recognises that terrorists can be highly motivated and may go to great lengths to gather information. This means there may be grounds for withholding what seems harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.
18. She considers that disclosing the requested information, however limited or apparently harmless, may allow those seeking to commit acts of

terrorism to identify and exploit perceived vulnerabilities in the UK's security vetting procedures.

19. In the Commissioner's view, withholding the numbers of applicants and refusals for CTCs is reasonably necessary in order to safeguard national security. Section 24(1) is therefore engaged.

Public interest test

20. The exemption is however subject to the public interest test set out in section 2 of FOIA. The Commissioner has therefore also considered whether in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
21. The CAA acknowledged that there is a general principle of transparency, open government and the public right of access to information held. It also recognised that the disclosure of the requested information could benefit the public by providing visibility of the standards applied to personnel working within the aviation security environment and reinforce confidence in security vetting procedures.
22. However, the CAA argued that there is very strong public interest in safeguarding the security of passengers in all modes of transport. *'Events have shown that terrorists continue to seek to avoid or subvert transport security measures. If information relating to security vetting processes and outcomes was put into the public domain, it may undermine aviation security by helping terrorists to identify ways to circumvent security procedures and use them to carry out potentially successful acts of terrorism. This danger is present even where only a limited amount of information is disclosed, as incomplete or partial information can be used to supplement information already in the public domain and can be used to build a clearer picture of the UK's aviation security performance.'*
23. The Commissioner acknowledges the complainant's reference to the decision notice FS50178276. However, the Commissioner also refers to the First-tier Tribunal decision in her guidance (Philip Kalman v Information Commissioner and the Department for Transport, EA/2009/0111 6 July 2010), which found that *'the consequences of a successful terrorist attack on a plane were so great that even if there was only a low risk that disclosing the information would aid such an attack, there was a very strong public interest in withholding the information.'*
24. Having considered all of the circumstances of this case, and taking into account the complainant's views, the CAA's submissions and her own guidance, the Commissioner has concluded that the balance of the public interest favours maintaining the exemption.

Right of appeal

25. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF