

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 January 2020

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to payments made to a named third party organisation.
2. The Home Office neither confirmed nor denied holding any information within the scope of the request, by virtue of sections 24(2) (national security) and 31(3) (law enforcement) of the FOIA.
3. The Commissioner's decision is that the Home Office was entitled to neither confirm nor deny holding the requested information by virtue of section 24(2) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### Request and response

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5. On 14 May 2019, the complainant wrote to the Home Office and requested information in the following terms:

*"Provide a list in date order of all payments or other rewards made to [name redacted] in the last 10 years with a description of what the payment was for if possible i.e. research into terrorism.*

*p.s. [name redacted] is a charity registered in England and Wales under registered charity number [redacted]"*.
6. The request was made using the 'whatdotheyknow' website.

7. Following an extension in the time for responding in order to consider the public interest test, the Home Office provided its substantive response on 30 July 2019. It refused to confirm or deny that it held the requested information. It cited the following exemptions as its basis for doing so:
  - section 24(2) national security
  - section 31(3) law enforcement
8. Following an internal review, the Home Office wrote to the complainant on 30 August 2019, maintaining its original position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 30 August 2019 to complain about the way his request for information had been handled.
10. The Commissioner wrote to both parties at the start of her investigation. She explained that the focus of her investigation would be to determine whether the Home Office handled the request in accordance with the FOIA, specifically whether it was entitled to neither confirm nor deny whether it held the requested information.
11. As is her practice, the Commissioner asked the complainant to contact her, within a specified timeframe, if there were other matters that he considered should also be addressed.
12. In the absence of a response from the complainant, the Commissioner progressed her investigation on the basis described above.

### **Reasons for decision**

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#### *Neither confirm nor deny*

13. Section 1(1)(a) of the FOIA requires a public authority to inform a requester whether it holds the information specified in the request. However, there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.
14. The decision to use a neither confirm nor deny response will not be affected by whether a public authority does, or does not, hold the requested information. The starting point, and main focus in most cases,

will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.

15. A public authority will need to use the neither confirm nor deny response consistently, over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is, in fact, held.
16. It is sufficient to demonstrate that either a hypothetical confirmation, or a denial, would engage the exemption. In other words, it is not necessary to show that both confirming and denying information is held would engage the exemption from complying with section 1(1)(a) of the FOIA.
17. In this case, the Home Office argued that it is not obliged to provide confirmation or denial as to whether it holds the requested information by virtue of two exemptions which it considers apply, section 24(2) and section 31(3).
18. The Commissioner is mindful that the decision to neither confirm nor deny is separate from a decision not to disclose information and needs to be taken entirely on its own merits.
19. The Commissioner has first considered the Home Office's application of section 24(2).

#### *Section 24 national security*

20. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security. The section 24 exemption is qualified and, if engaged, is therefore subject to the public interest test.
21. Quoting the Commissioner's published guidance<sup>1</sup> on section 24, the Home Office told the complainant:

*"National security includes more than the security of the UK, its military defence and its systems of government, it also involves co-operation with other states in combating international terrorism and*

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1174/safeguarding\\_national\\_security\\_section\\_24\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section_24_foi.pdf)

*guarding against actions targeted at other states which may impact on the UK and its people”.*

22. With respect to disclosure in this case, by way of confirmation or denial, the Home Office told the complainant:

*“The Home Office must assume that any information released under the FOI Act is available to everyone and not just the requester. This includes individuals that may wish to, or be trying to, pose a threat to the safety of the public or to national security. To confirm or deny whether “payment or other reward[s]” had been made to [name redacted] would reveal the type of parties the Home Office does or does not consult”.*

23. In its submission to the Commissioner, the Home Office expanded on its analysis. While recognising that there is no formal definition of national security within the FOIA, it acknowledged the Information Tribunal’s summary of the House of Lords observations in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47:

- ‘national security’ means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- action against a foreign state may be capable indirectly of affecting the security of the UK; and
- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom’s national security.

24. The Home Office told the Commissioner that the organisation named in the request is known for its work on the analysis of extremism and terrorism. In that respect, it told her:

*“Confirming or denying whether the information requested is held or not, risks prejudicing the national security and prevention of terrorist activity. Extremism can be linked to terrorism”.*

25. It argued that, if it was to confirm or deny whether information from the named organisation, or other similar third parties, informed the work of the Home Office, this would provide extremists with the opportunity to

subvert the work of that third party and lessen the Home Office's ability to safeguard national security.

26. In her published guidance on section 24, the Commissioner recognises that:

*"... It is not necessary to show that disclosing the information would lead to a direct or immediate threat to the UK".*

27. Her guidance further states:

*"When considering section 24(2) the same interpretation of "national security" and approach to "required for the purposes of" are applied as in section 24(1). The onus is on the public authority to demonstrate there is a link between confirming or denying that the information is held and the alleged harm to national security. Again, the causal effect does not have to be immediate or direct".*

28. Having considered the wording of the request – including its specific reference to 'research into terrorism' as a reason for a payment being made – the Commissioner is satisfied that the requested information, if held, would provide information about partners the Home Office works with and the type of work undertaken.

29. Taking into account the arguments from the Home Office, and in the absence of any countervailing arguments from the complainant, the Commissioner accepts that revealing whether or not information described in the request is held would be likely to undermine the safeguarding of national security. She therefore considers that section 24(2) is engaged.

30. Having accepted that the exemption is engaged, she next considered the public interest arguments.

*Arguments in favour of maintaining the exclusion of the duty to confirm or deny*

31. The Home Office acknowledged that confirming or denying whether information was, or was not, held on third parties that inform Home Office analysis would provide transparency and enable public debate.

32. The complainant did not advance any arguments in favour of maintaining the exclusion, nor did the Commissioner require him to.

*Arguments in favour of either confirming or denying whether information is held*

33. The Home Office told the complainant:

*"Confirming or denying whether the information is held or not, risks prejudicing national security and prevention of terrorist activity. Extremism can be linked to terrorism. If we were to confirm or deny whether information from [name redacted] (or any named third party) informed the work of the Home Office this would provide extremist actors with the opportunity to subvert the work of that third party and lessen our ability to safeguard national security".*

34. It also told him:

*"We assess that ... the safeguarding of national security [is] of overriding importance to the public and that in this instance, the public interest is best served by neither confirming nor denying whether the requested information is held".*

*Balance of the public interest arguments*

35. The Commissioner accepts that the FOIA gives individuals a right of access to official information with the intention of making public bodies more transparent and accountable.
36. She recognises that confirming or denying whether the requested information is held in this case would meet the public interest in transparency and accountability of the Home Office with regard to the expenditure of public funds.
37. However, in the Commissioner's view and in the circumstances of this case, there is a stronger public interest in protecting the principle of NCND where that is required in order to safeguard national security. The Commissioner is satisfied that it is required in this case.
38. The Commissioner therefore considers that the Home Office applied section 24(2) appropriately and will not go on to consider its application of section 31(3).

## Right of appeal

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39. 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)

40. 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.

41. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**