

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 July 2020

Public Authority: London Borough of Southwark
Address: PO BOX 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant submitted two requests to the London Borough of Southwark (the Council) seeking information about whether a named organisation had received funding to deliver Prevent training and programmes. The Council refused to confirm or deny whether it held information falling within the scope of the requests on the basis of sections 24(2) (national security), 31(3) (law enforcement) and 43(3) (commercial interests) of FOIA.
2. The Commissioner has concluded that the Council is entitled to rely on section 24(2) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of both the requests. She has also concluded that in all the circumstances of the case the public interest favours maintaining the exemption in both requests.
3. No steps are required.

Request and response

Case reference FS50879439

4. The complainant submitted the following request to the Council on 23 July 2019:

'I would like to request the following information about the Empowering Minds Consultancy LTD.

1. Will Empowering Minds Consultancy LTD receive funding for their 'Empowering Mothers against grooming and radicalisation' project for 2019/20 financial year?

2. If so, how much funding will Empowering Minds Consultancy LTD receive for their 'Empowering Mothers against grooming and radicalisation' project for 2019/20?

3. How many cohorts will the Empowering Minds Consultancy be delivering in 2019/20 as part of their 'Empowering Mothers against grooming and radicalisation' project?

4. Which areas in Southwark will Empowering Minds Consultancy be delivering in 2019/20 as part of their 'Empowering Mothers against grooming and radicalisation' project?

5. What are the projected outcomes of the 'Empowering Mothers against grooming and radicalisation'?

6. Can you provide us with the course materials that are being used to deliver the 'Empowering Mothers against grooming and radicalisation' project?

Sections (Section 24 (1) and 31 (1) (a) Section 38(1) (b) Section 43 Section 24 (1) and 31 (1) (a) citing commercial interests, national security and personal safety for refusal to answer an FOI are not applicable in the case of this request. Empowering Minds Ltd and Sofia Mahmood have appeared in press openly discussing Prevent and the programme 'Empowering mothers against radicalisation.' They have also disclosed they are Home Office-funded.'

5. The Council responded on 7 August 2019, under its reference number 1098292, and refused to confirm or deny whether it held any information falling within the scope of the request on the basis of sections 24(1) (national security) and 31(1) (law enforcement) of FOIA.¹
6. The complainant contacted the Council on 11 September 2019 and asked it to review this decision.
7. The Council informed her of the outcome of the internal review on 30 September 2019. The review upheld the application of both exemptions.

Case reference FS50900559

8. The complainant submitted the following request to the Council on 16 September 2019:

'I would like to request the following information about Empowering Minds Consultancy LTD

1. Has the council carried out any due diligence on Empowering Minds? If so, can you detail the rationale of the due diligence, what has been carried out, the dates and by which department?

2. How many council meetings have any representatives of Empowering Minds been invited to/will be invited from 2017 to 2020? If so, please share dates and minutes of these.

3. How many council meetings have any representatives of Empowering Minds attended from 2017 to present day? If so, please share dates and minutes of these.

4. Has Empowering Minds contributed to any Community Safety Partnership meetings? If so, what dates were these, what were the outcomes and please share the minutes of the meetings.

5. Has Empowering Minds contributed to the councils Prevent strategy for 2018/2019 and/or 2019/20? If so, how?

6. Has Empowering Minds delivered any programmes in schools with the local authority? If so, please share dates, where these were delivered to and the nature of the programmes.'

¹ Although the Council cited sections 24(1) and 31(1) of FOIA, the neither confirm nor deny exemptions are contained at sections 24(2) and 31(3) of FOIA.

9. The Council responded on 26 September 2019, under its reference number 1178322, and refused to confirm or deny whether it held any information falling within the scope of the request on the basis of sections 24(1) and 31(1) of FOIA.
10. The complainant contacted the Council on 2 October 2019 and asked it to review this decision.
11. The Council informed her of the outcome of the internal review on 29 October 2019. The review upheld the application of both exemptions.

Scope of the case

12. The complainant contacted the Commissioner on 2 October 2019 in relation to the first request she had submitted to the Council and again on 3 January 2020 in relation to the second request she had submitted to it.
13. The complainant disputed the Council's position that the exemptions it had cited applied, and even if they did, she argued that the public interest favoured disclosure of the requested information.
14. As is clear from the above there is a clear overlap between the information sought by the complainant's two requests. Furthermore, the Council's rationale for relying on the exemptions is the same for both requests. Therefore, the Commissioner has considered the Council's refusal of both requests in this single decision notice.
15. In relation to this complaint it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.
16. As explained above, the Council is seeking to rely on sections 24(2) and 31(3) to neither confirm nor deny (NCND) whether it holds information falling within the scope of either request. Therefore, this notice only considers whether the Council is entitled, on the basis of these exemptions, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

Reasons for decision

Section 24 – national security

17. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security.
18. FOIA does not define the term national security. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:
 - '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.
19. The approach that the Commissioner takes to the term 'required' as it is used in this exemption is that this means 'reasonably necessary'. In effect this means that there has to be a risk of harm to national security for the exemption to be relied upon, but there is no need for a public authority to prove that there is a specific, direct or imminent threat.
20. Therefore, section 24(2) is engaged if the exemption from the duty to confirm or deny is reasonably necessary for the purpose of safeguarding national security. The Commissioner considers that section 24(2) should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.

The Council's position

21. In its responses to the complainant the Council argued that confirming or denying whether it held the requested information could provide an insight into the nature of threat in a given area. This in turn could support those involved in pursuing terrorist or extremist activities to

identify areas of security weakness and targeting their activities, undermining or negating the ability of local authorities and other partners to prevent such activity.

The Commissioner's position

22. In addition to submitting these requests to the Council, the complainant has also submitted the same, or very similar, requests to a number of other London councils. She had subsequently submitted complaints to the Commissioner in cases where these councils had refused to confirm or deny whether they held the requested information. The Commissioner has issued a number of decision notices in relation to these complaints all of which have upheld the application of the various public authorities reliance on section 24(2) or section 31(3) of FOIA. The councils also adopted very similar reasoning to that set out by the Council in this case to support its reliance on these exemptions.
23. For example, this decision notice² involved a complaint about the London Borough of Haringey and concerned exactly the same requests as those which are the subject of this decision notice. Haringey Council relied on section 24(2) to NCND whether it held the requested information. In that notice the Commissioner concluded that section 24(2) was engaged and that in all the circumstances of the case the public interest favoured maintaining that exemption.
24. In the Commissioner's view the same considerations apply equally to the requests which are the focus of this complaint and she is therefore satisfied the Council was entitled to rely on section 24(2) to refuse to confirm or deny whether it holds information falling within the scope of the two requests. She is also satisfied that the public interest favours maintaining the exemption. The Commissioner does not intend to repeat her reasons for reaching these findings here but rather fully adopts the rationale set out at paragraphs 38 to 49 of the decision notice cited above.
25. In light of this decision the Commissioner has not considered the Council's reliance on section 31(3) of FOIA.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617863/fs50883105.pdf>

Right of appeal

26. 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

27. 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.
28. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF