

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2020

Public Authority: Kirklees Council
Address: High Street
Huddersfield
HD1 2ND

Decision

1. The complainant has requested information about the 'Empowering mothers against grooming and radicalisation project' funded by Kirklees Council. The Council provided some information falling within the scope of the request but refused the remainder, citing section 24(1) of the FOIA - safeguarding of national security.
2. The Commissioner's decision is that Kirklees Council is entitled to rely on section 24(1) to withhold the information. However, she also finds that the Council breached section 1(1)a of the FOIA by failing to notify the complainant that it did not hold some of the requested information. As the Council has now rectified this, no steps are required to comply with the legislation.

Request and response

3. On 24 September 2019 the complainant wrote to Kirklees Council and requested information in the following terms:

'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 Kirklees 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?'*

4. On 22 October the Council responded. It provided some information within the scope of the request but refused to provide the remainder, citing section 24 – national security – for questions 2,3 and 4; and section 43(2) – commercial interest – for question 6.

5. The complainant requested an internal review on 20 December 2019. The Council sent the outcome of its internal review on 6 February 2020, upholding its original position.

Scope of the case

6. The complainant contacted the Commissioner on 12 February 2020 to complain about the way her request for information had been handled. She considered that it is in the public interest to have a degree of transparency regarding the Prevent agenda, prior to delivery. She maintains that the information is available at the time of delivery through publicity and afterwards through the publication of supplier payments. For context, the Prevent Strategy (or agenda) forms part of

the government's four strand counter-terrorism strategy (known as CONTEST) and aims to prevent ideological radicalisation and extremism.

7. During the course of the investigation the Council retracted its reliance on section 43(2), commercial interests, for question 6. It informed the Commissioner that having reviewed all the information in relation to the request, it stated it did not hold the information relating to course materials. It continued to apply section 24(1) to questions 2, 3 & 4.
8. The Commissioner considers the scope of the case to be whether the Council is entitled to rely on section 24(1) to withhold the information for questions 2, 3 & 4, and whether it has complied with section 1(1)a of the FOIA by notifying the complainant if it holds information in response to question 6.

Reasons for decision

Section 24(1)

9. Section 24(1) provides an exemption from the duty to disclose information where this is reasonably required for the purposes of safeguarding national security. If the information falls within the exemption, it is then subject to the public interest test.
10. The FOIA does not provide a definition of national security, but based on previous tribunals¹, the Commissioner considers it to mean the security of the United Kingdom and its people. It includes matters such as the protection of democracy and the legal and constitutional systems of the state; military defence; and co-operation with other states in combatting terrorism.
11. The complainant has made the same request to a number of public authorities, which have also applied section 24(1) to the withheld information. Where a complaint has then been made to the Commissioner, she has conducted an investigation and issued decision notices, upholding the application of section 24(1)².

¹ *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007); *Secretary of State for the Home Department v Rehman* [2001] UKHL 47.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617801/fs50884438.pdf>

12. The arguments forwarded by the Council in this case, and the local circumstances, are very similar to those detailed in FS50885825 and FS50884438, primarily focussing on extremists using the information to gauge the extent of the Empowering Minds project to inform their radicalisation activities, thereby undermining counter-terrorist work and threatening national security.
13. Given the precedent set by these decision notices, combined with the similarities in context and arguments put forward by all three Councils, the Commissioner sees no reason to depart from her decision to uphold the application of section 24(1), or a need to repeat the arguments here. She therefore concludes that Kirklees Council has correctly engaged section 24(1) of the FOIA and the public interest in maintaining the exception outweighs the public interest in disclosure.

Section 1

14. Section 1(1) of the FOIA states that:

'Any person making a request for information to a public authority is entitled –

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.'*

15. When the Council responded to the request, it withheld the information to question 6 (the course materials) under section 43(2) of the FOIA – commercial interests. It upheld this position in its review response.
 16. During the course of the investigation, the Council revealed that it did not actually hold the course materials and had not notified the complainant of the same. She therefore finds that the Council breached section 1(1)a of the FOIA by failing to communicate that it does not hold the information about course materials. It has now rectified this and informed the complainant that the information is not held.
 17. However, the Commissioner has concerns about the procedural issues raised by the conduct of the Council in this regard. In practice, the Council applied an exemption, including an assessment of the public
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interest test, without even seeing the information it was supposedly withholding. It didn't just do this once, but twice, as it continued to maintain this position at review stage. This serves to undermine the credibility of the Council's FOIA practices, and with the exception of NCND cases, of which this is not one, Commissioner should not need to remind the Council that it cannot apply an exemption to information it has not seen, and does not hold.

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@justice.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

Andrew White
Head of FOI Complaints and Appeals
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