

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2020

Public Authority: London Borough of Brent
Address: Brent Civic Centre
Engineers Way
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Brent (the Council) seeking information about any evaluation undertaken about a safeguarding programme run by a named organisation. The Council refused to confirm or deny whether it held information falling within the scope of the request on the basis of sections 24(2) (national security) 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 and that in all the circumstances of the case the public interest favours maintaining this exemption. No steps are required.

Request and response

3. The complainant submitted the following request to the Council on 9 December 2019:

'I would like to request the following information about Aurety Limited:

1. *Has Auretys' 'Mothers Safeguarding champions' programme been evaluated internally or externally?*
2. *If so, can you provide evidence of this having taken place?*
3. *Who was the individual/organisation/department who carried this out?*
4. *When was the evaluation(s) carried out specifically dates?*

5. *What was the sample size evaluated?*
 6. *What was the outcome of the evaluation?*
 7. *Please provide us with a copy of the evaluation report(s) or an executive summary of the report.'*
4. The Council responded on 3 January 2020 and refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 24(2) (national security) and section 43(2) (commercial interests) of FOIA.¹
 5. The complainant contacted the Council on 20 January 2020 and asked it conduct an internal review of this refusal.
 6. The Council informed her of the outcome of the internal review on 13 February 2020. It upheld the application of the exemptions previously cited.

Scope of the case

7. The complainant contacted the Commissioner on 24 February 2020 in order to complain about the Council's refusal to provide her with the information she had requested.
8. 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.
9. As explained above, the Council is seeking to rely on sections 24(2) and 43(3) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the 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.

¹ The neither confirm nor deny provision within section 43 is actually contained at section 43(3) of FOIA.

10. It is also important to note at this stage that complainant had, prior to this request, submitted previous requests to the Council seeking information about whether Aurety Ltd had been contracted by the Council to deliver Prevent training. In response to those requests the Council had also refused to confirm or deny whether it held any information relying on section 24(2).
11. The complainant subsequently complained to the Commissioner about the Council's refusal of one of these requests. The Commissioner issued a decision notice on 4 May 2020 which concluded that the Council was entitled to rely on section 24(2) to refuse to confirm or deny whether it held the requested information.²

Reasons for decision

Section 24 – national security

12. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security.
13. 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.

² [FS50874610](#)

14. 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.
15. 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

16. As explained above, the Commissioner has previously issued a decision notice in relation to the Council's reliance on section 24(2) in relation to a very similar requests submitted to it by the complainant. One of the requests in the previous complaint concerned whether Aurety had received funding for its 'Mothers Safeguarding champions' programme. The request which is the focus of this complaint seeks information about whether any evaluation had been undertaken by the Council of this particular programme.
17. The Council's arguments set out in its responses to the complainant to support its reliance on section 24(2) in relation to this request follow the logic of the submissions it provided to the Commissioner as part of her investigation of the previous complaint. The Commissioner has not set out these submissions in detail in this notice. Rather, they are set out at paragraphs 20 to 34 of decision notice cited at footnote 2.
18. However, in summary the Council's position is that confirming whether or not it held the requested information would undermine the effectiveness of Prevent programmes. Firstly, by reducing the number of civil society organisations (CSOs) willing to deliver this Prevent training and secondly by highlighting an area that received dedicated Prevent funding would allow for a geographical 'threat map' to be built up.
19. In the context of this case, the Council noted that in her request for an internal review the complainant had argued that other local authorities had disclosed similar information under FOIA to that sought by this request, and thus in her view, this undermined its reliance on section 24(2) of FOIA. In response to this argument, the Council explained that it could not take into account the actions of other local authorities rather, it must consider the consequences of it complying with the request.

The complainant's position

20. As suggested by the above, the complainant argued that given the ability of other local authorities to reveal the information requested this undermined the Council's reliance on section 24(2). She argued that if disclosing this information posed a genuine threat to national security it seems highly unlikely that other local authorities would see fit to disclose it.

The Commissioner's position

21. The Commissioner is satisfied that the Council is entitled to rely on section 24(2) in order to refuse to confirm or deny whether it holds the requested information. In her view if it complied with this request and confirmed whether it held the evaluation information requested, it would in effect be revealing whether or not it had provided Aurety with funding to deliver 'Mothers Safeguarding champions' programme. For the reasons set out in the previous decision notice, the Commissioner is satisfied that by confirming whether or not such funding was provided would harm nation security. The Commissioner's rationale for reaching that conclusion is set out at paragraphs 38 to 45 of the previous decision notice and she adopts the same arguments in support for conclusion in this present case.
22. With regard to the complainant's argument above regarding the actions of other local authorities, the Commissioner agrees that each request needs to be considered on its own merits. Furthermore, she does not consider it to be the case that simply because one (or more) local authorities have complied with a similar request this fundamentally undermines the Council's reliance on section 24(2) in this case. For the reasons set out in detail in the aforementioned decision notice she considers there to be compelling reasons for the Council to rely on section 24(2). She would also note that she is aware that a number of other London Boroughs have also adopted a NCND position when they have received the same or similar requests to this one.
23. Section 24(2) is therefore engaged.

Public interest test

24. Section 24(2) is a qualified exemption. Therefore, the Commissioner is required to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether the Council holds the requested information.
25. The complainant argued that there was a clear public interest in the disclosure of the requested information as it provides assurance that the Prevent agenda and contracts that are awarded are appropriate and effective.
26. The Council argued that it was clearly against the public interest to jeopardise the delivery of any counter-terrorism strategy, and, as a result jeopardise the national security of the UK and its citizens. It was therefore of the view that public interest favoured maintaining the exemption contained at section 24(2) of FOIA.
27. The Commissioner agrees that there is a clear public interest in local authorities being open and transparent about how they deliver training within their area given the role that Prevent plays in the UK's CONTEST strategy. Furthermore, the Commissioner acknowledges that in light of the arguably controversial nature of Prevent, the importance of such transparency should not be underestimated. However, the Commissioner agrees with the Council that there is a very strong public interest in ensuring that the national security of the UK is not compromised. Given the risks that complying with section 1(1)(a) in respect of this request presents to the delivery of Prevent, not just in Brent, but more broadly, she has therefore concluded that the public interest favours maintaining the exemption contained at section 24(2) of FOIA.
28. In light of this finding the Commissioner has not considered the Council's reliance on section 43(3) of FOIA.

Right of appeal

29. 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

30. 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.
31. 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
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