

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2021

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

Decision (including any steps ordered)

1. The complainant has requested statistics relating to deprivation of British nationality pursuant to section 40(2) of the British Nationality Act 1981 ("BNA") from the Home Office.
2. The Home Office refused to provide the requested information citing sections 22 (Information intended for future publication), 36(2)(c) (Prejudice to effective conduct of public affairs), 40(2) (Personal information) and 23(1) (Information supplied by, or relating to, bodies dealing with security matters) / 24(1)(National security) in the alternative.
3. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of section 22 and also section 23(1) or, in the alternative, section 24(1) of the FOIA. No steps are required.

Background

4. The Home Office publishes a Transparency Report which includes some of the data sought in the information request being considered. The last report was published in March 2020¹ and includes figures for 2018/19.
5. This report includes the following explanation:

"The British Nationality Act 1981 ["BNA"] provides the Secretary of State with the power to deprive an individual of their British citizenship in certain circumstances. Such action paves the way for possible immigration detention, deportation or exclusion from the UK and otherwise removes an individual's right of abode in the UK.

The Secretary of State may deprive an individual of their British citizenship if satisfied that such action is 'conducive to the public good' or if the individual obtained their British citizenship by means of fraud, false representation or concealment of material fact.

When seeking to deprive a person of their British citizenship on the basis that to do so is 'conducive to the public good', the law requires that this action only proceeds if the individual concerned would not be left stateless (no such requirement exists in cases where the citizenship was obtained fraudulently).

The Government considers that deprivation on 'conducive' grounds is an appropriate response to activities such as those involving:

- *national security, including espionage and acts of terrorism directed at this country or an allied power;*
- *unacceptable behaviour of the kind mentioned in the then Home Secretary's statement of 24 August 2005 ('glorification' of terrorism etc)²;*
- *war crimes; and*
- *serious and organised crime.*

... The Government considers removal of citizenship to be a serious step, one that is not taken lightly. This is reflected by the fact that

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919625/CCS0320317274-001_HM_Government_Transparency_Report_Web_Accessible.pdf

² <https://www.parliament.uk/written-questions-answers-statements/written-question/lords/2015-01-14/HL4168>

the Home Secretary personally decides whether it is conducive to the public good to deprive an individual of British citizenship. Between 1 January 2018 and 31 December 2018, 21 people were deprived of British citizenship on the basis that to do so was 'conducive to the public good'³.

6. The complainant, who is acting on behalf of a client, Rights and Security International ("RSI"), explained to the Commissioner:

" As explained on their website,⁴ for over three decades RSI has been successfully advocating for a rights-based approach to national security. It works to hold Governments to account for any unlawful actions taken in the name of national security and counter-terrorism. One of RSI's key goals is to promote effective oversight of national security laws, policies and practices by the judiciary, parliaments, the public and other monitoring bodies. One of the primary ways in which RSI achieves this goal is to prepare research and publish investigative reports into how national security laws, powers and policies have been and are being exercised by governments, and the human rights implications that exercise may have.⁵

RSI has been involved in research relating to the human rights implications of national security policy for over 30 years.⁶ RSI works specifically in areas of national security and counter-terrorism policy which have an inherent risk of harm to those impacted by them or

³ Figures derived from internal Home Office information.

⁴ See RSI's website: <https://www.rightsandsecurity.org/>

⁵ See for example our RSI's report *Preventing Education?* which traversed the human rights implications of the way the Prevent statutory duty was impacting children and the realization of their rights, see: URL: Rights Watch UK, 'Preventing Education: Human Rights and UK Counter-Terrorism Policy in Schools' (13 July 2016) <<https://www.rightsandsecurity.org/action/research/entry/prevent-publication>> accessed 14 October 2020; Similarly, RSI has been engaged on an ongoing basis in research across Europe on the impact of counter-terrorism policies on women. This is an active project. Our historic research and published reports pertaining to Northern Ireland were germane to inquiries into among other things, high profile cases of unlawful killing by Government forces; (see for example: here, here, here, here, and here. A more comprehensive view of our historic work is accessible on our website.

⁶ For more information on RSI's historical work, please see their organizational timeline, available here.

which have resulted in serious harm. Moreover, the areas in which RSI works are consistently shrouded in secrecy, undertaken in clandestine fashion, or subject to limited or attenuated oversight and review.

These features are particularly evident in the work that RSI is conducting in respect of the detention of women and children in North-East Syria”.

Request and response

7. On 14 December 2020, following earlier related requests, the complainant made the following information request on behalf of RSI:

“... RSI considers that its previous requests were refused on an incorrect basis. In any event, RSI has carefully considered the reasons given for the previous refusal of its requests, and determined which information is critical to its work that should be disclosable under FOIA despite the concerns raised in the responses received to date. It therefore makes a targeted request under FOIA of the following essential information:

a. The annual figure for the number of individuals who have been deprived of their British nationality pursuant to section 40(2) BNA during the year 2019 (the figures released previously in HM Government Transparency Reports):

b. The figure to date for 2020;

c. For each of the above figures, how many of the individuals were women; and

d. For each of the above figures, how many of the individuals are the parents of minor children; and

e. If parents of minor children, how many minor children did they have at the time of deprivation.

Please provide a response to each limb of the request, as broken down above”.

8. On 15 February 2021 the Home Office responded. It refused to provide the requested information citing the following sections of the FOIA: 22 (Information intended for future publication) and 36(2)(c) (Prejudice to effective conduct of public affairs).

9. No internal review was requested or undertaken. However, exceptionally, the Commissioner agreed to commence an investigation without an internal review in this case.
10. During the Commissioner's investigation the Home Office revised its position. It added reliance on sections 40(2), and 23(1) / 24(1) in the alternative; its rationale was provided to the complainant at this stage.
11. The Commissioner has viewed the withheld information and confidential arguments *in situ*.

Scope of the case

12. The complainant contacted the Commissioner on 5 March 2021 to complain about the way her request for information had been handled.
13. Following the later citing of sections 40(2) and 23(1) / 24(1) in the alternative, she was invited to submit further rationale. This was provided on 22 July 2021.
14. The Commissioner will consider the citing of exemptions below.

Reasons for decision

Section 22 – intended for future publication

15. This has been cited in respect of part (a) of the request. The Home Office added that part (b):

"...relates to an incomplete year and so we have engaged section 36 for this question, although it should be noted that with regard to question [part (b)], figures for the whole of 2020 will also be published in due course".

16. Section 22(1) of the FOIA states that:

Information is exempt information if-

- a) *the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*
- b) *the information was already held with a view to such publication at the time when the request for information was made, and*

- c) *it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).*

17. Therefore, in order for section 22 to be engaged, a public authority has to demonstrate that each of the three criteria set out above are met.

Did the Home Office hold the information at the time of the requests?

18. In its submission to the Commissioner, the Home Office explained:

"There is a settled intention to publish this information. This information is published annually. Below are links to the HM Government Transparency Reports which detail the "annual figure for the number of individuals who have been deprived of their British nationality pursuant to section 40(2)" of the British Nationality Act 1981 for previous years.

<https://www.gov.uk/government/publications/hm-government-transparency-report-on-the-use-of-disruptive-and-investigatory-powers> - page 25

<https://www.gov.uk/government/publications/disruptive-and-investigatory-powers-hm-government-transparency-report> - page 26

<https://www.gov.uk/government/publications/disruptive-and-investigatory-powers-transparency-report-2018> - page 27

<https://www.gov.uk/government/publications/transparency-report-disruptive-powers-2018-to-2019> - page 22

19. The Commissioner is therefore satisfied that, at the time of the request, the Home Office did hold the requested information.

Did the Home Office intend to publish the information at some date in the future, whether determined or not?

20. It is important to note that although the exemption under section 22 requires a public authority to be holding the information in question with a view to its publication at the time of the request, the exemption does not require a set publication date to be in place. The date of publication does not need to be definite for the exemption to apply.

21. The Home Office has explained:

"This process of routinely publishing the yearly total is now well-established; however, the exact publication date had not been determined at the point of the request. The Department intends to publish the information it holds, and it took this decision before the

request was received. This satisfies the first condition of section 22 of the FOI Act. Although it is anticipated that publication will take place during Summer 2021, this cannot be confirmed”.

22. Based on the Home Office’s submission, the Commissioner is satisfied that, at the time it received the request, the Home Office had a settled intention to publish the data.

In all the circumstances of the requests, was it reasonable to withhold the information prior to publication?

23. With regard to whether it was reasonable to withhold the requested information, the Home Office has explained:

“We believe it is reasonable to withhold the information until the date of publication. This is because the information requested is currently going through pre-publication procedures, and it is important to ensure the information is accurate and compliant with all publishing procedures in place for such data.

The Home Office recognises that there is a firm public interest in this information but considering both the sensitivity of the matter and the Home Office intention to publish the information, it is reasonable that the Department should have the time to prepare the information for publication. The Home Office must make the information available to everyone at the same time, with the appropriate context in place. This means the information/data should be released within the proper context of the transparency report as opposed to just issuing data in isolation. We believe it is reasonable to allow this process to conclude”.

24. The complainant has provided the Commissioner with the following points with respect to this criterion of the exemption:

“The information now sought by RSI is of the same (or at least is of a similar) type of information to that which the Government has published or disclosed previously.

... the number of individuals deprived of their British nationality under Section 40(2) of the BNA has been made publicly available for the years 2006-2018. These numbers are disaggregated by year.

*... RSI has been seeking the information now sought, or similar information, for some time given its importance to its work. ... it has submitted requests on 14 May 2019, 18 December 2019, and 28 February 2020. The Home Office has refused repeatedly to provide **any** information. It has relied on a variety of exemptions in refusing to do so, namely: a. Section 22 FOIA, saying 2018 data would be*

released in 2019. However, it was not released until March 2020 and the 2019 data has still not been released...".

25. In respect of this part of the request, the complainant's concerns largely relate to the delays in the data being published, as well as, in her view, the urgency it being made available as soon as possible.
26. It is clear from the Home Office's response, and its usual practices, that on the date it received the complainant's requests it had a clear intention to publish the requested information at a future date in line with its normal publication, albeit this is yet to happen.
27. The section 22 exemption does not require a public authority to have a set publication date. The public authority just has to have decided that it will publish the information at some time in the future for the exemption to be engaged.
28. The Commissioner understands that the requested information is routinely published and that this is an established process that has been done in previous years.
29. The Home Office has explained above that it needs to have the time to prepare the information prior to publication and that it needs to make that information available to everyone at the same time, with the appropriate report and context in place.
30. The Commissioner accepts that, at the time of the request, it was reasonable in all the circumstances to withhold the information given that the information was not yet ready for publication and was still being prepared.
31. Section 22(1) is therefore engaged in relation to part (a) of the request.

Public interest test

32. The exemption at section 22(1) is qualified by a public interest test. Therefore, the Commissioner has considered whether in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure at the time of the request.

Public interest arguments in favour of disclosing the requested information

33. The Home Office recognised the public interest in individuals being deprived of their citizenship. It advised that this is why it took the decision to routinely publish the annual figures.
34. The complainant has advised:

"In relation to the number of those deprived of their citizenship in the period January 2019-14 December 2020, it refused to disclose the information relying upon section 22 FOIA, saying the information would be released at some unspecified time in 2021. Such commitments have been made before and were breached ... In any event, in assessing the public interest balance, no account was taken for the need for urgency in respect of this information. The fact FOIA is motive blind does not justify ignoring why it is in the public interest for information to be provided. It is essential here for informed public debate of an urgent matter. Instead of properly acknowledging the extent of the public interest in disclosure, the Home Office focused on its claimed need to ensure the publication of official information is a properly planned and managed process. No account was taken, however, of the fact the Request covers data only. Not the detail of any draft reports. The suggestion that an assurance process is still required is deeply concerning in relation to a request for data that should be readily available and verifiable. Deprivation of citizenship is an extreme power. The Secretary of State must know how many times she has exercised that power over a given period. The statement "early release of the requested information could be misrepresentative of the information and could potentially impact upon by third parties and voluntary organisations" is inexplicable in this context. It is not reasonable to continue to fail to publish data in a timely fashion".

Public interest arguments in favour of maintaining the exemption

35. The Home Office has argued that there is :

"... a strong public interest in permitting Government to publish this information in a manner and form of its own choosing, especially considering the sensitive nature of the subject matter. The Home Office must make the information available to everyone at the same time, with the appropriate context in place. As noted above, what is meant by this, is that this information/data should be released within the proper context of the transparency report as opposed to just issuing data in isolation. We believe the public interest falls heavily in favour of this information being disclosed within the transparency report, within the appropriate setting, and with explanatory narrative provided in the report. We do not believe it is in the public interest to 'rush-out' information or figures, either in isolation, or with supporting narrative, which have not been properly considered and verified through the standard publication and quality-checking process".

36. The Commissioner considers that there is a clear public interest in the work of public bodies being transparent and open to scrutiny. She also

recognises the public interest allowing scrutiny of those instances where citizens have deprived of their rights and freedoms.

37. However, the Commissioner also considers that there is a public interest in allowing public bodies to account for their work within their formally published reports report rather than collating this information at various other points during the year and disclosing it in a piecemeal fashion via the FOIA.
38. On balance, whilst she understands the valid concerns raised by the complainant, the Commissioner considers that the Home Office is sufficiently held to account by the production of its properly contextualised and accurate figures and that the public interest lies with allowing it to withhold the information in these circumstances, so that the data can be integrated into the report and published in line with its planned publication process. Without this, the data could be misconstrued and not properly understood; this would not be in the greater public interest.
39. In view of the above, the Commissioner has concluded that the public interest favours maintaining the exemption in relation to part (a) of the request.
40. Furthermore, whilst it is not for the Commissioner to provide a public authority with arguments in support of withholding information, where her experience suggests that the arguments that have been provided to her are more appropriate to an exemption other than the one that has been cited, she is entitled to intervene (and she considers it in the public interest to do so) to apply the correct exemption herself; this is to prevent the disclosure of information which she considers would otherwise be exempt.
41. The request in this case was made on 14 December 2020, shortly before the end of the calendar year. At the time of its receipt, the full figures for 2020 would obviously have been incomplete. However, by the time of the refusal, 21 February 2021, the Home Office confirmed that the data for the whole calendar year was available.
42. Therefore, it is the Commissioner's opinion that the information requested at part (b) of the request was also held at the time of the refusal and would properly fall within the remit of this exemption. Therefore, for the same reasons argued above, it should be properly withheld until such time as it will be formally published.

Section 23 – information supplied by, or relating to, bodies dealing with security matters
Section 24 – national security

43. The Commissioner has next considered the citing of section 23(1) with 24(1) of the FOIA in the alternative⁷ to the information requested at parts (c) to (e) of the request. The Home Office has explained to the Commissioner:

"In the circumstances of this case it is not appropriate to disclose any information that would undermine national security or reveal the extent of any involvement of the security bodies listed in section 23(3) of the FOIA. We therefore apply sections 23(1) (information supplied by or relating to security bodies) and section 24(1) (national security) in the alternative. This means that only one of the two security exemptions is engaged, but it is not appropriate to say which one. In the event that the IC does not find that section 23 applies, we submit that 'in the alternative' that section 24 is engaged."

44. For the reasons set out in her recently refreshed guidance on the interactions between sections 23 and 24,(see footnote 7), the Commissioner maintains the view that allowing a public authority to cite these exemptions in the alternative provides a pragmatic solution where public authorities are concerned that relying simply on section 23(1) or section 24(1) could reveal the involvement (or not) of a security body, and as a result would instead cite an NCND exemption. Allowing them to confirm that the information is held, and so increasing transparency.

45. The Commissioner would also like to confirm that, having viewed the withheld information, she is satisfied that neither exemption has been cited in a 'blanket' fashion.

46. The Commissioner notes the complainant's detailed submission regarding the citing of these exemptions.

47. In respect of section 23 this included the following:

⁷ Citing these two exemptions 'in the alternative' means that although only one exemption is engaged the other one is also cited so as to disguise which exemption is in fact being relied upon. This approach may be necessary in instances where citing one exemption would in itself be harmful. Further information on this issue is contained in the following guidance issued by the Commissioner:

<https://ico.org.uk/for-organisations/foi-guidance/how-sections-23-and-24-interact/#text4>

*"In its revised response, dated 25 June 2021, the Home Office alleged that it is possible that security bodies could have been **involved** in matters to do with deprivation, and if so, could have supplied information specific to RSI's request (emphasis added).*

Section 23 is relied upon in the alternative to section 24 because the Home Office is seeking to avoid confirming whether or not security bodies are involved. We are aware that this approach to the exemptions is under appeal to the Upper Tribunal in the case of Williams & others. We therefore urge the Information Commissioner to reach a decision on the substance of the Home Office's reliance upon each exemption, and not simply its case in the alternative.

In any event, whilst we do not dispute that section 23 (3) bodies could have been involved in matters to do with deprivation of citizenship, we remind the Information Commissioner that that is not the test under section 23 (1). Instead, the test is whether the information was supplied by or relates to section 23 (3) bodies.

...

Moreover, the Home Office has not established any positive case beyond mere assertion for why the possibility that security bodies were involved in matters to do with deprivation may also suggest that they had have supplied the information specific to the request. The Information Commissioner is urged to establish which information is said to have been supplied by the security services, and whether this information was in fact held in any event/made available by other sources.

Likewise, the information sought by this request does not relate to any section 23 (3) body or bodies

Thus, we submit that the Home Office cannot rely on section 23 (1) to exempt the information requested from disclosure".

48. In respect of section 24 this included the following:

"In its revised response, dated 25 June 2021, the Home Office alleged that the information requested by RSI could be exempt from disclosure on the basis that the information could provide insight into the way that cases are handled or the extent of coverage or knowledge of particular family groups/units or types of individuals, which would affect the UK's ability to protect its national security.

In response, we strongly dispute the allegation that the anonymised numerical data requested could represent a threat to national security. As detailed in our complaint to the Information

Commissioner, dated 5 March 2021, the overall deprivation numbers, which parts (c), (d) and (e) seek to disaggregate, were previously publicly disclosed by HM Government for the years 2006-2018. The Home Office has not put forward a convincing case as to why disaggregation of this data solely on grounds of gender or number of minor children impacted would pose an increased risk to national security.

...

every individual who is deprived of their British citizenship has a right of appeal. When those appeals are brought, both the individual's gender and the number of children that individual had at the time of, and subsequent to, the deprivation decision are among the types of information routinely disclosed in the course of proceedings, including to the press. That is so even when an anonymity order is made to protect the identities of the individuals involved. This type of information cannot pose a national security or any other threat because if it did the Home Secretary would seek to withhold it in the context of proceedings. She has not done so.

...

In addition, even if a link to national security were to be made out, section 24 (1) is a qualified exemption, which means that the balance of the public interest in applying it must be considered.

In its revised response, dated 25 June 2021, the Home Office set out its reasoning in considering the public interest test. It alleged that the 'general public interest' in openness and transparency in government was outweighed by the public interest in safeguarding national security.

In response ... there is a strong public interest in the disclosure of disaggregated statistics which cannot be accounted for by looking only at the 'general public interest' in openness and transparency. The Home Office does not appear to have fully grasped the importance of disclosure of disaggregated statistics, instead merely paying lip-service to the 'public interest in members of the public being able to understand the breakdown of those deprived of their citizenship' in its revised response, dated 25 June 2021, and then immediately alleging that this interest is outweighed by an unsubstantiated 'public interest in safeguarding national security' without any explanation of why the former interest is so significant or why the latter interest is considered to outweigh the former.

Deprivation of citizenship is an extreme power which can have a catastrophic impact on anyone's life as it removes the ability of the person deprived to demand protection of their rights from the State

doing the depriving. In the case of deprivation of citizenship of these women, a further consequence is that formerly British women and (often) British children are left trapped in a legal black hole in camps where conditions have been confirmed by UK and European domestic courts and international human rights experts to amount to at least inhuman or degrading treatment, and possibly torture, contrary to international and domestic law...".

49. Section 23(1) of FOIA provides an exemption which states that:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)".

50. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).

51. The Home Office has explained:

"Grounds on which section 23(1) could be engaged

The exemption at section 23(1) (information supplied by or relating to security bodies) could be engaged on the basis that information in scope of this request and held by the Home Office could have been provided by, or might relate to, any of the bodies listed in section 23(3) of the Act.

Deprivation is a tool used by HM Government to keep the UK and its citizens safe from threats. Section 23 bodies often work closely with HM Government and the remit of section 23 bodies is to keep the UK and its citizens safe from threats. It is therefore possible that such bodies could be involved in matters to do with deprivation.

In this case, the information relates to the gender of individuals who have been deprived of their citizenship during the period between 2019 – 2020, how many were parents, and how many minor children each had. As the exemption at section 23(1) is both class-based and absolute, no evidence of harm or assessment of the balance of the public interest would be required to support its application were it to be engaged in respect of the requested information".

52. Section 24(1) states that: *"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".*

53. 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.
54. 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.
55. Furthermore, in this context the Commissioner interprets '*required for the purposes of*' to mean '*reasonably necessary*'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
56. As is clear from the wording of section 24(1), the exemptions provided by sections 23(1) and 24(1) of the FOIA are mutually exclusive. This means they cannot be applied to the same information.
57. However, the Commissioner recognises that the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem if a public authority does not want to reveal whether or not a section 23 security body is involved in an issue. To overcome this problem, as referred to above at footnote 2, the Commissioner will allow public authorities to cite both exemptions '*in the alternative*' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.
58. As the Commissioner's guidance on this issue explains, a decision notice which upholds the public authority's position will not allude to which exemption has actually been engaged. It will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.

59. The Home Office has explained:

"Grounds on which section 24(1) could be engaged

It is possible that no section 23 security body was involved in the scope of this request. Nevertheless, disclosing the requested information could provide insight into the way that cases are handled or the extent of coverage or knowledge of particular family groups/units or types of individuals, which would affect the UK's ability to protect its national security. Anything that could prejudice this work would endanger the State. This would prejudice national security and as such section 24(1) is engaged".

60. The Commissioner is unfortunately limited in what she is able to say in response to these arguments as she cannot reveal the Home Office's position without disclosing the withheld information. However, she is able to confirm that in respect of the application of section 23 the term 'relates to' is interpreted widely and includes any information concerning or linked to the activities of a security body.
61. Based on confidential submissions provided to her by the Home Office, and having also viewed the withheld information, the Commissioner is satisfied that the withheld information either falls within the scope of the exemption provided by section 23(1) of FOIA or falls within the scope of the exemption provided by section 24(1) of FOIA, and that if the exemption engaged is section 24(1) then the balance of the public interest favours maintaining the exemption.
62. The Commissioner notes that the complainant has asked her to analyse whether it is section 23 or 24 that applies. However, given the way the Home Office has applied the exemptions, and in line with our current guidance position, the Commissioner cannot elaborate further on the reasoning behind this finding without compromising the content of the withheld information itself, or by revealing which of these two exemptions is actually engaged.
63. As she finds that the remaining information was properly withheld under these exemptions, the Commissioner has not found it necessary to consider either section 36 or section 40.

Other matters

64. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Information Notice

65. As the Home Office failed to respond to the Commissioner's enquiries in a timely manner, despite being given additional time in which to do so, it was necessary for her to issue an Information Notice in this case, formally requiring a response. The Information Notice will be published on the Commissioner's website.
66. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy⁸ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy⁹.

⁸ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁹ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

67. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

68. 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.

69. 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

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