

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 25 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested the legal costs relating to Shamima Begum.
2. The Commissioner's decision is that the Home Office has correctly applied section 23(1) - Information supplied by or relating to security bodies, to the withheld information.
3. The Commissioner does not require the Home Office to take any steps as a result of this decision notice.

Request and response

4. On 28 October 2021, the complainant wrote to the Home Office and requested information in the following terms:

"Shamima Begum. To date what have your costs been in this case, to include all Court costs, counsel etc, in immigration appeal court and all other applicable court cases."
5. The Home Office responded on 12 November 2021 and confirmed it held information within the scope of the request. However, it refused to provide it section 23 FOIA as its basis for doing so.
6. In their request for internal review the complainant stated:

"You state a S23 exemption applies, how?

Why would any security body provide information on costs? These would be Treasury Solicitors, and appointed Counsel."
7. Following an internal review the Home Office wrote to the complainant on 13 December 2021 and maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 14 December 2021 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of this investigation is to determine if the Home Office is entitled to rely on section 23(1) to withhold the requested information.

Reasons for decision

Section 23 – Information supplied by, or relating to, bodies dealing with security matters

10. Section 23(1) FOIA states:
 - (1) 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).

Subsection (3) lists those bodies as follows:

(3) The bodies referred to in subsections (1) and (2) are—

(a) the Security Service,

(b) the Secret Intelligence Service,

(c) the Government Communications Headquarters,

(d) the special forces,

(e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,

(f) the Tribunal established under section 7 of the Interception of Communications Act 1985,

(g) the Tribunal established under section 5 of the Security Service Act 1989,

(h) the Tribunal established under section 9 of the Intelligence Services Act 1994,

(i) the Security Vetting Appeals Panel,

(j) the Security Commission,

(k) the National Criminal Intelligence Service,

(l) the Service Authority for the National Criminal Intelligence Service,

(m) the Serious Organised Crime Agency,

(n) the National Crime Agency,

(o) the Intelligence and Security Committee of Parliament.

11. For the exemption at section 23(1) to be engaged, a public authority need only demonstrate one of the following:

- that the information was supplied by any of the named security bodies, either directly or indirectly; or
- that the information relates to any of the named security bodies.

12. If the requested information falls within either of the above classes, it is absolutely exempt from disclosure under the FOIA. There is no requirement for the public authority to demonstrate that disclosure would result in harm and the exemption is not subject to the public interest test.

The Commissioner's decision

13. When the Commissioner investigates complaints about the application of section 23(1), he needs to be satisfied that the information was in fact supplied by a security body or relates to such a body. The term 'relates to' is interpreted widely and includes any information concerning or linked to the activities of a security body.
14. In its internal review the Home Office stated:

"...the decisions in the Shamima Begum case concern the deprivation of nationality and refusal of leave to enter. These decisions were informed by material provided by a section 23 body which had subsequent involvement in the proceedings."
15. To clarify further, what this means is that a section 23 body provided the information prior to the commencement of any legal proceedings. Consequently, any legal proceedings that followed 'relate to' that section 23 body.
16. Full details cannot be provided in this decision notice however the Commissioner has had two separate meetings with the Home Office to discuss and review information regarding this case and is satisfied that the information subject to the current request relates to a security body and that section 23(1) has therefore been correctly engaged.
17. During the course of the investigation the Home Office referred the Commissioner to the Supreme Court judgment [2021] UKSC¹ 7 as further evidence to support its position that the requested information relates to a section 23 body.
18. As explained in the Commissioner's published guidance², section 23(1) is an absolute exemption which means that it is not generally subject to the public interest test set out at section 2(2) of FOIA. However, there is an exception in the case of some historical records, as set out in section 64(2) of FOIA.
19. Section 23(1) is only subject to the public interest test when it is applied to information in a historical record held by The National Archives or the

¹ [R \(on the application of Begum\) \(Appellant/Respondent\) v SIAC and SSHD \(Respondent/Appellant\) \(supremecourt.uk\)](#)

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-23-security-bodies/>

Public Records Office Northern Ireland. Originally, a historical record was one over 30 years old, or if forming part of a file, the last entry on that file must be over 30 years old. However this has now been amended to 20 years by the Constitutional Reform and Governance Act 2010.

20. The Commissioner is satisfied that the requested information does not meet the criteria to be considered as a historical record, therefore the Home Office is correct not to consider the balance of the public interest in this case.
21. The Commissioner is satisfied that the requested information relates to a security body listed in section 23(3) of FOIA, therefore he finds that the Home Office is entitled to rely on section 23(1) to withhold it.

Right of appeal

22. 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

23. 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.
24. 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

Susan Duffy
Senior Case Officer
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