

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 August 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of a review of the Proceeds of Crime Centre. The Home Office refused to disclose the information, citing section 23(1) (Information supplied by, or relating to, bodies dealing with security matters).
2. The Commissioner's decision is that the Home Office was entitled to rely on section 23(1) of FOIA to refuse the request. However, he finds that the Home Office breached section 10(1) as it did not provide its response to the request within the statutory timeframe.
3. The Commissioner does not require the Home Office to take any remedial steps.

#### **Request and response**

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4. On 13 October 2021, the complainant wrote to the Home Office and requested a copy of the Home Office commissioned review of the Proceeds of Crime Centre (POCC) and the associated recommendations document.
5. The Home Office responded on 4 February 2022 and refused to provide the requested information. It cited section 23(1) as its basis for doing so.
6. Following an internal review the Home Office wrote to the complainant on 28 April 2022. It maintained its reliance on section 23(1).

## Scope of the case

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7. The complainant initially contacted the Commissioner on 6 January 2022 as they had not received a response to their request for information.
8. The complainant wrote to the Commissioner again on 28 April 2022, after receiving an initial response to their request and the subsequent internal review decision. They set out their dissatisfaction with the Home Office's reliance on section 23(1) for refusing to disclose the requested information.
9. The scope of the Commissioner's investigation and the following analysis is to determine if the Home Office is entitled to rely on section 23(1) of FOIA to withhold the requested information.

## Reasons for decision

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

10. Section 23(1) of FOIA provides 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)."

11. To successfully engage the exemption at section 23(1), 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. The 'named security bodies' are listed at section 23(3) of FOIA.
13. If the requested information falls within either of the classes listed at paragraph 11 of this notice, it is absolutely exempt from disclosure under 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 Complainant's position**

14. The Complainant provided the Commissioner with various arguments about why they disagreed with the Home Office's application of section 23(1). These included:
  - They appreciate that the National Crime Agency (NCA), as a security body, can rely on section 23(1) but they do not agree that the Home Office is able to do so.
  - They do not believe that it is fair to hide behind an exemption to avoid publishing the review because it may be critical of a particular department.
  - The Home Office has published similar reports previously, specifically they published the precursor preliminary report into the role of Financial Investigators.

### **The Home Office's position**

15. In the Home Office's initial response to the complainant it set out that it is not appropriate to disclose any of the information within the scope of the request as the information relates to a national security body listed in section 23(3) of FOIA.
16. In its internal review the Home Office further explained that both the report and the recommendations sought by the complainant 'relate to' a body listed in section 23(3). It also acknowledged the complainant's arguments regarding the public interest in the information, but reiterated that information which is exempt from disclosure by virtue of section 23(1) of FOIA is not subject to the public interest test as it is an absolute exemption.

### **The Commissioner's position**

17. 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.
18. The Commissioner has considered the Home Office's position and the complainant's arguments, along with the specific information which is being withheld. He has not found it necessary to contact the Home Office for its further arguments in this case.
19. The requested information is the report and recommendations following a Home Office review of the POCC. The POCC is an operational branch of

the NCA, responsible for the training and accreditation of financial investigators. The NCA is listed at section of 23(3)(n) of FOIA. As set out above, a public authority does not need to demonstrate any prejudice or threat to national security to rely on section 23(1), it simply needs to demonstrate that the information falls into either of the classes set out in paragraph 11 of this notice.

20. As explained in the Commissioner published guidance<sup>1</sup>, 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.
21. 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 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. 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.
22. 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.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-23-security-bodies/>

## Right of appeal

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23. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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 .....**

**Claire Churchill**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**