

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2022

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Housing, Communities and Local Government (MHCLG) seeking risk assessments regarding Covid-19 prepared in respect of the 2021 G7 Summit in Cornwall. MHCLG transferred the request to the Cabinet Office as it, rather than MHCLG, held information falling within the scope of the request. The Cabinet Office refused to provide this information on the basis of the exemptions contained at section 24(1) (national security) and sections 36(2)(b)(i), (2)(b)(ii) and (2)(c) (effective conduct of public affairs) of FOIA.
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of section 24(1) of FOIA and that in all the circumstances of the case the public interest favours maintaining the exemption.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the Ministry of Housing, Communities and Local Government (MHCLG) on 21 June 2021:

'Please provide any and all Risk Assessments carried out or commissioned by the Ministry of Housing, Communities & Local Government that relate to the Covid-19 risks associated with the 2021 G7 Summit in Cornwall, along with any scientific evidence that underpinned any Risk Assessments for the Summit.'

5. The MHCLG transferred the request to the Cabinet Office who responded on 19 July 2021 and confirmed that it held information falling within the scope of the request. However, it considered this to be exempt from disclosure on the basis of section 24 (national security) of FOIA.
6. The complainant contacted the Cabinet Office on 28 July 2021 and sought an internal review of this refusal.
7. The Cabinet Office informed him of the outcome of the review on 27 January 2022. It upheld the decision to withhold the requested information on the basis of section 24(1) of FOIA. In doing so, the Cabinet Office provided some additional reasoning to support its reliance on this exemption but explained that it could not share its full rationale because to do so would result in the disclosure of information that was itself exempt from disclosure.¹ The Cabinet Office also explained that it had concluded that some of the withheld information was exempt from disclosure on the basis of sections 36(2)(b)(i), (2)(b)(ii) and (2)(c) (effective conduct of public affairs) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 24 January 2022 in order to complain about the Cabinet Office's handling of his request. He disputed the Cabinet Office's position that disclosure of the withheld information would have the harmful impact it envisaged, and in any
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¹ Although the Cabinet Office did not refer to section 17(4) of FOIA, it is relevant to note that this provision of the legislation states that public authorities do not need to explain why an exemption applies when refusing a request if to do so would itself result in the disclosure of exempt information.

event, he argued that there was a compelling public interest in disclosure of the withheld information. He was also dissatisfied with the Cabinet Office's delay in completing the internal review.

Reasons for decision

Section 24 – national security

9. 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'.

10. 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.

11. Furthermore, in this context the Commissioner interprets 'required for the purpose 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.

The Cabinet Office's position

12. The Cabinet Office explained that the following information falls within the scope of the request:

- The section of the UK Government G7 Leaders Summit High Level Risk Register entitled 'Coronavirus Outbreak within the Venue' ('the Risk Register'); and the
- Covid-19 related entries in the Risk Register Guidance Note ('the Guidance Note').

13. The Cabinet Office noted that in the internal review it had explained that:

'a significant factor in applying this exemption is because some of the material in scope uses the methodology employed by the National Security Risk Assessment (NSRA) process. This is a classified cross-government assessment of the most serious risks facing the UK or its interests overseas. Disclosure of this information would compromise the safeguarding of national security.'

14. It elaborated on this position in its submissions to the Commissioner. Some of these submissions were provided to the Commissioner in confidence given that they refer to exempt or sensitive information. However, the Commissioner has set out the remainder of these submissions below.

15. The Cabinet Office explained that the methodology used in the NSRA process includes the principles, the means of assessment and the products displayed within it. The NSRA sets out the various threats and hazards that the UK faces. The Cabinet Office argued that if the methodology were to be disclosed it would allow adversaries of the UK to establish how the Government assesses risk in the UK and identify weaknesses within that assessment.

16. The Cabinet Office explained that the NSRA (and it follows, the Risk Register) reflects a process in which risks are identified and the mitigation of such risks are developed. The Cabinet Office argued that if the method by which a risk has been assessed became known to an adversary of the UK, they may also reasonably be able to infer how the risk has been mitigated by the Government. This would give such adversaries an advantage in any attempts by them to cause harm to the UK.

17. The Cabinet Office argued that as the methodology of the NSRA guides the content of the Risk Register, the two are inextricably linked and the disclosure of any part of the Risk Register would effectively reveal the methodology which underpins the NSRA. In the Cabinet Office's view

this would result in an adverse effect on national security and that as a result withholding the Risk Register is reasonably necessary for the purposes of safeguarding national security.

18. The Cabinet Office argued that disclosure of the Guidance Note would clearly identify risks and potential mitigating actions in relation to Covid-19 and this event. The Cabinet Office noted that the likelihood of certain risks occurring and the impact that would result from such an eventuality are set out in the document. As a result, the Cabinet Office argued that disclosure of the Guidance Note would reveal the way of working by Cabinet Office officials in preparing for a major event of the magnitude of the G7 Summit. The Cabinet Office argued that as with the Risk Register, disclosure of the information contained in the Guidance Note could be of use to adversaries of the UK. This is because it would enable those adversaries to understand how officials identify risk and the methods by which they determine appropriate mitigating actions. As a result, the Cabinet Office argued that the disclosure of the Guidance Note would have an adverse effect on national security and withholding it was also reasonably necessary for the purposes of safeguarding national security.

The complainant's position

19. The complainant argued that as the Government provided (at the time of the request and since the outbreak of the pandemic in the UK in early 2020) a whole host of figures on Covid-19 on a daily basis, he did not believe it is valid to claim that information regarding the potential impact of the G7 Summit on Covid-19 infections in Cornwall should be kept from the public on national security grounds.

The Commissioner's position

20. Having carefully considered the content of the Risk Register, along with all of the Cabinet Office's submissions, the Commissioner is prepared to accept that disclosure of this document would provide an insight into the methodology used by the NSRA process. Furthermore, the Commissioner accepts the rationale of the Cabinet Office's position that if adversaries of the UK had knowledge and understanding of this methodology this would allow them to identify and potentially exploit weaknesses in how the UK attempts to mitigate against risks to national security. The Commissioner is also conscious that the NSRA process covers a range of national security risks that the UK faces; the process is not limited simply to high profile events such as the one which is the focus of this request. Therefore, any disclosure of information which would undermine or weaken the resilience of the NSRA process risks having a widespread impact. In view of this, the Commissioner is satisfied that withholding the Risk Register is reasonably necessary for the purposes of national security.

21. With regard to the Guidance Note, again having had the benefit of examining this document, and the Cabinet Office's submissions, the Commissioner considers its rationale for withholding it to be sound. That is to say, the Commissioner accepts that disclosure of it could be useful to the UK's adversaries in understanding how the Government identifies and mitigates risks relating to high profile international events held in the UK. In turn, disclosure of this document could result in any such adversaries being better placed to understand how to undermine any safeguards that may be in place to protect future events. The Commissioner also accepts that it is legitimate to argue that potential actions by such adversaries in respect of such events could represent a challenge to the UK's national security. The Commissioner is therefore also satisfied that withholding the Guidance Note is reasonably necessary for the purposes of national security.
22. In reaching this conclusion, the Commissioner has taken into account the arguments advanced by the complainant. The Commissioner accepts that there was a significant amount of information published by the Government on a daily basis about Covid-19 infection rates, including granular information about local infection rates. The Commissioner also acknowledges that the Government, and wider public health messaging, during the height of the pandemic in 2020 and 2021 also released significant information about measures which could be taken to mitigate the spread of the virus. However, in the Commissioner's view the information which falls within the scope of this request is materially different not only in content, but also in terms of its broader context and purpose, from the information highlighted by the complainant or other information already in the public domain. The availability of such information does not, in the Commissioner's view, undermine the Cabinet Office's application of section 24(1) of FOIA.

Public interest test

23. Section 24 is a qualified exemption. Therefore, the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing that information.
24. The complainant argued that there was a compelling public interest in the disclosure of the information falling within the scope of his request. In support of this position he explained that in the weeks following the G7 Summit Covid-19 infections in Cornwall rose dramatically, and to a level never previously seen in the county. He noted that the highest concentration of infections were in the areas where the most activity during the G7 Summit had taken place, where cases rose by between 2,000 and 3,000 per cent. Furthermore, he noted that for a number of weeks following the G7 Summit some areas of Cornwall had the highest rates of any 'UTLA [Upper Tier Local Authority] or LTLA [Lower Tier Local

Authority] area in England' and that in the weeks following the G7 Summit Covid-19 infections, hospitalisations and deaths all rose to levels never previously seen in the county. The complainant noted that since then, the county's NHS services issued several critical warnings to residents and its ambulance service response times have been consistently among or at the bottom on response times in England.

25. In light of this the complainant argued that there was a clear and obvious public interest in what the Cabinet Office's risk assessments found the impact of the G7 Summit would have on Cornish residents. In his view, the residents of Cornwall have a right to know what impact these risk assessments found the G7 Summit would have on Covid-19 cases in the county and/or any impact this would have on local NHS services.
26. For its part, the Cabinet Office acknowledged there is a general public interest in disclosure of information and that openness in government may increase public trust in, and engagement with, the government. It also accepted that there is a definite public interest in members of the public being able to understand matters related to national security.
27. However, the Cabinet Office explained that it had weighed these interests against a very strong public interest in safeguarding national security. It argued that it was important that this sensitive information is protected, as disclosure of information would damage national security and that interest could only be overridden in exceptional circumstances. The Cabinet Office argued that taking into account the circumstances of this request, it had determined that the balance of the public interest favoured maintaining the exemption contained at section 24(1) and withholding the information.
28. The Commissioner agrees that there is a clear public interest in the government being open with members of the public about matters relating to national security. Furthermore, the Commissioner recognises that the complainant has advanced a strong case for disclosing information which reveals the details of how the Government assessed the risks for the local area of holding the G7 summit in Cornwall at that point during the pandemic. Whilst there would appear to be some conflicting views on the factors that led to the increase in cases following the summit, and the extent to which the summit was a factor², in the Commissioner's opinion this does not undermine the legitimate and

² <https://www.theguardian.com/world/2021/jun/22/no-10-says-g7-summit-not-to-blame-for-rise-in-cornwalls-covid-cases> and <https://www.politico.eu/article/covid-cases-in-cornwall-spiked-following-g7-preparations/>

significant public interest in disclosure of information setting out how the risks to the local community were assessed prior to the event. Disclosure of the withheld information would directly meet this interest.

29. However, in the Commissioner's opinion there is also an obvious, and weighty, public interest in safeguarding national security. In the context of this case the Commissioner is conscious that disclosure of the information risks harming national security in a broad and widespread manner as opposed to simply impacting national security in one discrete area. Disclosure of the Risk Register could undermine the effectiveness of the NSRA's methodology in respect of planning around a range of national security risks and disclosure of the Guidance Note could undermine the effectiveness of security planning in respect of numerous future events. In light of these widespread risks, and taking into account the strong public interest in protecting national security, the Commissioner has determined that the public interest favours maintaining the exemption contained at section 24(1) despite the acknowledged public interest in the disclosure of the specific information in the scope of this request.
30. In light of this finding, the Commissioner has not considered the Cabinet Office's reliance on sections 36(2)(b)(i), (2)(b)(ii) and (2)(c) of FOIA.

Other matters

31. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.³ In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days. In the circumstances of this case the Cabinet Office took six months to complete the internal review which the Commissioner does not accept is a reasonable amount of time. He expects the Cabinet Office to ensure that such delays are not replicated in future cases and has logged the delay in this case for his own intelligence gathering purposes.

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

32. 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

33. 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.
34. 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

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