

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2022

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

Decision (including any steps ordered)

1. The complainant has requested information about third party companies.
2. The Home Office refused to confirm or deny that it held the requested information, citing 24(2) (national security) and section 43(3) (commercial interests) of FOIA.
3. The Commissioner's decision is that the Home Office is entitled to rely upon section 24(2) to neither confirm nor deny that it holds the requested information.
4. The Commissioner does not require the Home Office to take any steps.

Request and response

5. On 19 November 2021, the complainant wrote to the Home Office and requested the following information:

"Please disclose details of any correspondence between or work undertaken with the following companies between the years 2015 to present, or dating back as far as is permitted within the cost limit. I'd like dates and cost of any work undertaken too, and details that don't fall under exemptions due to national security.

[8 company names redacted]."

6. On 10 December 2021 the Home Office responded. It explained that it was unable to confirm whether it held the requested information, under 12(2) (cost of compliance exceeds appropriate limit). The Home Office advised the complainant to refine their request.
7. On 10 December 2021 the complainant refined their request, amending the scope of the request to 2017-present.
8. The Home Office responded on 23 December 2021, refusing to confirm or deny that it held the requested information under section 24(2) (national security) and section 43(3) (commercial interests) of FOIA.
9. The complainant requested an internal review on 9 April 2022. This was provided on 13 July 2022, with the Home Office maintaining its position.

Reasons for decision

10. The Commissioner has previously dealt with a similar case, FS50870302¹. In that case, the Home Office also applied section 24(2).
11. Section 24(1) of FOIA states that information is exempt if it is required for the purpose of national security.
12. Section 24(2) states that a public authority may refuse to confirm or deny whether it holds information (whether it holds it or not) if providing that confirmation or denial would, in itself, reveal information that is exempt under section 24(1).
13. National security means the security of the United Kingdom and its people. FS50870302 includes a detailed analysis on the application of section 24(2). The Commissioner doesn't deem it necessary to replicate that analysis here.
14. In order to provide the information the complainant has requested, the Home Office needs to either confirm or deny that it holds the relevant recorded information. In other words, the Home Office has to either confirm or deny that it has approached, or employed, any of the organisations in question.
15. The Home Office is concerned that providing this confirmation or denial has the potential to provide extremists or terrorists with a more detailed insight into national security matters, which may be exploited.

¹ [FS50870302 \(ico.org.uk\)](https://ico.org.uk/cases/fs50870302)

16. Disclosure under FOIA is disclosure to the world at large. The Commissioner's guidance on section 24 states 'terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding seemingly harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.'
17. If a public authority is likely to receive numerous similar requests, it needs to make sure that it is consistently refusing to confirm or deny whether the information is held. If, for example, the Home Office was inconsistent in its handling of such requests, a pattern would develop which effectively signposts which organisations, in which fields, the Home Office is engaging with. Therefore, the Home Office's refusal to confirm or deny that the requested information is held should not be taken as evidence that the information is or is not held.
18. The complainant has expressed concern that this confirmation or denial is in the public interest, due to the nature of the work that the organisations are involved in. In considering whether section 24(2) is engaged, the Commissioner has considered the fields that these organisations are involved with. All of the organisations have different objectives and business models but they're all associated with the fields of spyware, cybersecurity, private co-corporate intelligence or surveillance.
19. With this in mind Commissioner considers that the exemption is engaged, and therefore, he has gone onto consider the public interest test.
20. On the one hand, confirmation or denial would provide transparency about the types of organisations the Home Office employs. On the other hand, the information is required for national security.
21. The complainant has provided the Commissioner with several news articles which, in their opinion, demonstrates that compliance with the request outweighs any prejudice to the organisations' commercial interests.
22. The Commissioner isn't considering commercial interests in this notice, he is considering national security. The Commissioner notes that the arguments the complainant has put forward, which relate to the type of work that these organisations undertake, may actually be relevant when considering why the Home Office shouldn't confirm or deny that it holds the information.
23. Whilst the public may be interested to know if the Home Office has utilised the services of any of these organisations, the Commissioner doesn't consider the public interest in confirmation or denial outweighs the need to protect national security.

24. Since the Commissioner accepts that the Home Office is entitled to rely upon section 24(2) to refuse to confirm or deny that it holds the requested information, he doesn't need to go on to consider the Home Office's application of section 43(3).

Other matters

25. The complainant is concerned that the Ministry of Defence has complied with a similar request for information. Each case must be dealt with on a case by case basis and if one public authority deals with a request one way, it doesn't automatically follow that other public authorities will deal with the same request in the same way.

Right of appeal

26. 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

27. 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.
28. 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

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