

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2022

Public Authority: Department for Levelling Up, Housing and Communities

Address: Fry Building
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested correspondence exchanged with the Cabinet Office's FOI Clearing House regarding requests about Grenfell Tower. The above public authority ("the public authority") provided some information but relied on either section 23 (security bodies) or section 24 of FOIA (national security) to withhold the remaining information.
2. The Commissioner's decision is that the public authority has either correctly cited section 23 or has correctly cited section 24 and, if it is section 24, the balance of the public interest favours maintaining that exemption.
3. The Commissioner does not require further steps.

Request and response

4. On 28 September 2021, the complainant wrote to the public authority and requested information in the following terms:
 - "1) Since the tragedy in June 2017, I would like to be provided with copies of all FOI/EIRs requests that were sent/forwarded to the Cabinet Office Clearing House, which mention, or refer to Grenfell Tower. Please use the following keyword search terms to locate the information: "Grenfell" and/or "Grenfell Tower"; "Grenfell

Tower Inquiry" and/or "Grenfell Inquiry"; "Aluminium composite material cladding" and/or "ACM" and/or "cladding"; I am happy for you to redact the requester's name. I am happy for you to restrict your search to September 2017 to February 2018. If you use some kind of Clearing House referral form or template, then I would like to be provided with copies of those forms that contain FOI requests that were sent/forwarded to the Cabinet Office Clearing House, which mention, or refer to Grenfell Tower (using the same keyword search terms above).

- “(2) For each Grenfell-related request that was sent to the Clearing House, please disclose the Clearing House's response as to how the requests should be handled.”
5. The public authority responded on 12 November 2021. It provided the majority of information it held, with personal data redacted. It also withheld a small quantity of information and relied on either section 23, or section 24 in the alternative, in order to do so. It upheld its position at internal review.

Reasons for decision

6. Sections 23 and 24 of FOIA are mutually exclusive, however, the Commissioner recognises that, because these exemptions cannot be applied to the same material, the mere act of citing the correct exemption can, itself, reveal exempt information. To overcome this problem, public authorities may cite both exemptions “in the alternative” when necessary. This means that the public authority may refer to both exemptions in its refusal notice, without revealing which of the two exemptions is actually engaged. The Upper Tribunal ruled in *Foreign, Commonwealth and Development Office v Information Commissioner, Williams & Others (Sections 23 and 24)*: [2021] UKUT 248 (AAC) that this practice was in accordance with FOIA.
7. As the Commissioner’s guidance on this issue explains¹, a decision notice which upholds the public authority’s position in such circumstances will not allude to the exemption which is actually engaged. The decision will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/how-sections-23-and-24-interact/#text4>

exemption is section 24(1) of FOIA, the public interest favours withholding the information.

8. The Commissioner has been provided with a copy of the information that was withheld. Having done so, he is satisfied that this 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 public interest favours maintaining that exemption.
9. The Commissioner appreciates that this will be frustratingly opaque, but he is unable to elaborate further on the rationale for his decision without either revealing the information that has been withheld or undermining the manner in which the public authority has applied the exemptions.

Right of appeal

10. 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

11. 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.
12. 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

Roger Cawthorne
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF