

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about 'Patriotic Alternative' from the Home Office. The Home Office refused to provide the requested information, citing sections 24(1) (National security) and 35(1)(a) (Formulation of government policy). It also refused to confirm or deny holding any further information, citing section 23(5) (Information supplied by, or relating to, bodies dealing with security matters); this position was later revised to section 23(1).
2. The Commissioner's decision is that, where cited, section 23(1) was properly engaged. He also found that the Home Office was entitled to rely on sections 24(1) and 35(1) to withhold the remaining information. No steps are required.

Background

3. The Home Office has confirmed that Patriotic Alternative falls within the remit of its PREVENT programme¹. According to its website, this programme "addresses the personal, ideological, and social factors which make people more receptive to radicalisation, diverting people away from becoming terrorists or supporting terrorism".

¹ <https://homeofficemedia.blog.gov.uk/2023/02/08/prevent-and-channel-factsheet-2023/>

4. The website also clarifies that the programme: "does not target any one community and deals with all forms of terrorism, including Islamist, extreme right-wing and a range of emerging threats".

Request and response

5. On 11 October 2021, the complainant made the following request for information:

"Please would you let me know in writing if you hold information of the following description:

Since and including 2020, measures which have been taken to cope with the potential threat posed by the far-Right organisation Patriotic Alternative.

Please may I see the information.

... I believe that the information requested is required in the public interest for the following reasons:

1. To uphold public confidence that the Home Office adequately assesses threats to social cohesion and public safety;
2. To provide assurance that the law is adequate to tackle organisations which promote hate and extremism such as Patriotic Alternative;
3. To ensure that money is correctly spent on monitoring extremism".

6. The Home Office responded on 22 December 2021. It refused to provide the requested information, citing sections 24(1) and 35(1)(a) of FOIA. It also refused to confirm or deny whether it held any further information citing 23(5) of FOIA.
7. The complainant requested an internal review on 22 December 2021. He did not provide any specific grounds of complaint.
8. Following an internal review the Home Office wrote to the complainant on 25 January 2022. It maintained its position.
9. During the Commissioner's investigation the Home Office revised its position. Instead of citing section 23(5) it cited section 23(1), ie it confirmed that it held some information which was either supplied by, or relates to, one of the bodies referred to in section 23(3) of FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 25 January 2022 to complain about the way his request for information had been handled. He only made reference to the citing of section 35 of FOIA and gave no specific grounds of complaint.
11. On commencing his investigation, the Commissioner asked the complainant to clarify the scope of his complaint. The complainant responded that he wished the Home Office's application of all three exemptions to be examined. He did not provide any specific grounds of complaint.
12. The Commissioner will consider the exemptions cited below. He has viewed the withheld information in its entirety.

Reasons for decision

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

13. This exemption has been cited for some of the withheld information.
14. Section 23(1) of the FOIA states:

"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)".
15. 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.
16. The 'named security bodies' are listed at section 23(3) of FOIA.
17. If the requested information falls within either of the above classes, it is absolutely exempt from disclosure under FOIA. There is no requirement for a public authority to demonstrate that disclosure would result in harm and the exemption is not subject to the public interest test.
18. The Home Office explained that the withheld information includes information both supplied by, and relating to, one or more named

security bodies and that this information is contained in a small number of the withheld documents.

19. The Home Office identified the named security body/bodies in question to the Commissioner and explained why the information was both supplied by, and related to, the body/bodies in question. Consequently, the Home Office said that this information was exempt from disclosure under section 23(1), in its entirety.

The Commissioner's decision

20. 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 that it 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. However, the Commissioner expects public authorities to consider whether the withheld information could be disaggregated, in order to separate out, and consider disclosure of, any information that is only remotely connected to a security body.
21. In this case, the Commissioner is satisfied that, where this exemption has been cited, the withheld information was both supplied by, and/or relates to, one or more of the bodies listed in section 23(3) of FOIA; it cannot be disaggregated. Consequently, the Commissioner is satisfied that the Home Office was entitled to rely on section 23(1) of FOIA to withhold the information, where cited.

Section 24 – National security

22. This has been cited for some of the withheld information.
23. Information which does not fall within section 23(1) of FOIA is exempt information under section 24(1) if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.
24. In broad terms, section 24(1) allows a public authority not to disclose information if it considers that the release of the information would make the United Kingdom or its citizens vulnerable to a national security threat.
25. The term "national security" is not specifically defined by UK or European law. 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:

- “national security” means the security of the United Kingdom and its people;
 - The interests of national security are not limited to actions by the 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 cooperation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom’s national security”.
26. The exemption provided by section 24 applies in circumstances where withholding the requested information is “required for the purpose of safeguarding national security”. The Commissioner interprets “required” as meaning “reasonably necessary”.
27. It is not necessary to show that disclosing the withheld information would lead to a direct threat to the United Kingdom.
28. The Home Office provided very little rationale to the complainant about its engagement of this exemption. At refusal it said:
- “Section 24(1) of the FOIA relates to national security. We have balanced the public interest considerations for and against release of the information you request, and have found that the public interest falls in favour of maintaining these exemptions”,
- adding in its public interest test that:
- “... national security applies to information if disclosure would be harmful e.g. to the national infrastructure or to counter-terrorism measures”.
29. At internal review, the Home Office said that its original response explained why it was necessary to withhold the information for the purposes of safeguarding national security. It added that:
- “A threat to national security, can arise either directly or indirectly in order for the exemption to be engaged. In this case, the key point is that disclosure would provide information to those of concern, to the authorities, which could allow them to further or continue their activities”.

30. To the Commissioner, the Home Office said:

"Providing information of this nature would render national security measures less effective by providing individuals who may pose a threat to national security with knowledge and insight".

It explained that:

"Disclosure of these documents would show the strengths and vulnerabilities of our approaches and could encourage other groups to undertake extremist activity to which we have little capability to respond".

31. The Home Office has provided further rationale which the Commissioner is unable to share here without disclosing information which is itself exempt, but it has been taken into account in the Commissioner's decision.
32. Section 24 will only be engaged if exemption from disclosure is "reasonably necessary" for the purpose of safeguarding national security.
33. Having viewed the information that is withheld under this exemption, and taking into account the additional explanation which the Home Office has provided to him, the Commissioner accepts that the exemption is properly engaged.
34. However, the exemption is subject to the public interest test set out in section 2 of FOIA. The Commissioner has therefore also considered whether, in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Arguments in favour of disclosure

35. The complainant did not provide any arguments.

36. The Home Office has argued:

"We recognise that this information may be of interest to the public, although it does not necessarily follow that it is in the public interest to disclose any specific information relating to it. We also recognise the need for transparency and accountability of government and the desire for public reassurance that the measures in place to safeguard national security are effective and proportionate".

Arguments in favour of maintaining the exemption

37. The Home Office has argued:

“Disclosure of the requested information would undermine national security and the integrity and effectiveness of the government due to conduct practises to keep the public safe [sic].

Disclosure would risk a negative impact on operations to understand and mitigate activities which may be non-conducive to the public good, now or in the future.

Disclosure could allow those of concern to the authorities to gain knowledge or information which could allow them to further or continue their activities of concern”.

The Commissioner’s view

38. The Commissioner recognises that section 24 is not an absolute exemption and therefore there may be circumstances where the public interest favours the disclosure of information which engages this exemption. However, in the Commissioner’s opinion, and in the absence of arguments to the contrary from the complainant, the public interest in disclosing the withheld information is outweighed by that in maintaining the exemption in this case.
39. The Commissioner considers that there is an obvious and weighty public interest in the safeguarding of national security. In the particular circumstances of this case, the Commissioner agrees with the Home Office that it would be firmly against the public interest to reveal information about the strengths and weaknesses of its approach to addressing extremist groups such as Patriotic Alternative.
40. The Commissioner’s decision is therefore that, where cited, the Home Office was entitled to rely on section 24(1) of FOIA to withhold information.

Section 35 – Government policy

41. This exemption has been cited in respect of all information not covered by the above exemptions.
42. Section 35(1)(a) FOIA states:

“Information held by a government department ... is exempt information if it relates to –

(a) The formulation or development of government policy”.

43. This exemption is class-based, which means that, unlike a prejudice-based exemption, there is no requirement to show harm in order for it to be engaged. The relevant information simply has to fall within the description set out in the exemption.
44. The Commissioner considers that the purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well considered or effective policies. In particular, it ensures a safe space to consider policy options in private. His guidance advises that a public announcement of the decision is likely to mark the end of the policy formulation process. The classic and most formal policy process involves turning a White Paper into legislation. In such cases, policy formulation can continue all the way up to the point the Bill finally receives royal assent and becomes legislation. The Commissioner understands the term 'development' of policy to include the process of reviewing, improving or adjusting existing policy.
45. The Commissioner considers that the term 'relates to' in section 35 can be interpreted broadly within the meaning of the class-based exemption. This means that the information itself does not have to be created as part of the policy-making activity in question. Any significant link between the information and the activity is sufficient².
46. In engaging this exemption, the Home Office told the complainant:

"Section 35(1)(a) of the FOIA provides that information can be withheld if it relates to the formulation or development of government policy. This includes the design of new policy and the process of reviewing or improving existing policy".
47. At internal review it added:

"Any significant link between the information requested and the activity involved in formulating or developing Government policy is enough to engage the exemption. The withheld information, in this case, relates to a 'live' policy issue, in process of formulation and development".

²<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i70/DFES.pdf>

48. The Home Office has confirmed to the Commissioner that the policy in question is that of: "Prevent Disruptions, developing the policy to tackle radicalising influences which operate below the terrorism threshold".
49. The Home Office explained to the Commissioner:
- "Disclosure of the requested information would undermine HMG [His Majesty's Government]'s ability to formulate new policy and address emerging concerns in this space. Disclosure would risk pre-empting decisions still to be made by Ministers and would have a detrimental impact on the integrity and effectiveness of the policy formulation process".
50. The Home Office has provided further arguments which the Commissioner is unable to reproduce here, including providing a description of the documents in question, because, to do so, would involve specific reference to the content of the withheld information.
51. Having considered the withheld information, and the Home Office's explanation, the Commissioner is satisfied that that it comprises information relating to the formulation or development of government policy. The Commissioner is satisfied that the exemption at section 35(1)(a) is engaged.
52. He has therefore gone on to consider the public interest and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The public interest

53. The key public interest arguments for this exemption will usually relate to preserving a 'safe space' to debate live policy issues, away from external interference and distraction. There are also often related arguments about preventing a 'chilling effect' on free and frank debate in future.

Public interest in favour of disclosure

54. The complainant did not provide any arguments.
55. The Home Office argued:

"We recognise that this information could be a matter of public interest, although it does not necessarily follow that it is in the public interest to disclose any specific information relating to it. We also recognise the need for transparency and accountability of government with its policies".

Public interest in favour of maintaining the exemption

56. The Home Office has argued:

“A strong factor in favour of withholding the information is the importance of protecting the ‘safe space’ in which Ministers and officials are able to consider policy options in private, without the distraction that would result from premature disclosure. I would add that, where a subject is potentially controversial, this can have the effect, of strengthening the public interest in withholding the information. This is because the level of public concern, media interest and general discussion in relation to a subject can mean that the effects of disclosure of information can be inflammatory and so the effect of disclosure must be carefully considered”.

57. It also argued that disclosure: “would risk pre-empting decisions still to be made by Ministers”.

Balance of the public interest

58. The Commissioner accepts that the Home Office needs a ‘safe space’ to develop ideas, debate live issues, and reach decisions away from external interference and distraction. This can carry significant weight depending on the circumstances of the case. The need for a safe space will be strongest when the issue is still live. The timing of the request is therefore an important factor.

59. The Commissioner acknowledges that the matters under consideration were live at the time of the request. Furthermore, he understands the importance of the subject matter which is under consideration here, ie the development of policy within the national security sphere to deal with the threat of radicalisation of individuals.

60. In the circumstances of this case, he recognises a greater public interest in protecting the safe space in which live matters are formulated and tested. Had the matters not been live at the time of the request, he would have given less weight to this argument.

Conclusion

61. In light of the above, the Commissioner has concluded that the public interest favours maintaining the exemption. In reaching this view, the Commissioner has given particular weight to the subject matter and the timing of the request and to the fact that the requested information related to matters which were live at the time of the request.

62. The Commissioner’s decision is therefore that the Home Office was entitled to apply section 35(1)(a) to withhold the remaining information.

Other matters

63. Although they do not form part of this notice, the Commissioner wishes to highlight the following matter of concern.

Information Notice

64. As the Home Office failed to respond to the Commissioner's enquiries in a timely manner it was necessary for him to issue an Information Notice in this case, formally requiring a response. The Information Notice will be published on the Commissioner's website.

65. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy³ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual⁴.

³ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁴ https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf

Right of appeal

66. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

67. 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.

68. 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

Carolyn Howes
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