

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

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

Decision (including any steps ordered)

1. The complainant has requested information relating to its "Desistance and Disengagement Programme" from the Home Office. The Home Office refused to provide the requested information citing sections 24(1) (National security), 38(1) (Health and safety) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 24(1) to withhold the requested information. He requires no steps to be taken.

Background

3. The Home Office has explained to the Commissioner that:

"... the Home Office Desistance and Disengagement Programme (DDP) focuses on rehabilitating individuals who have been involved in terrorism, or terrorism-related activity and reducing the risk they pose to the UK. The programme is owned by the Home Office however we work closely with partners in other Government departments, such as Her Majesty's Prison and Probation Service (HMPPS) and Counter Terrorism Policing (CTP) who provide operational delivery of the service".

4. The Commissioner has previously considered a similar request¹ which is currently awaiting the result of an appeal to the First-tier Tribunal. His decision in that case was reached without consideration of the Home Office's application of section 24 of FOIA.

Request and response

5. Following two earlier, similar requests, on 8 June 2022 the complainant wrote to the HO and requested information in the following terms:

"in calendar year 2021 how many people who were on the DPP [sic] at any time during that period because they were identified as possibly -

1. Holding extreme Islamic views - "Islamism"
2. Holding extreme white supremacy views, being a white neo-Nazi etc.

What was the total number of people who were on the DPP [sic] during that year?"

6. On 20 June 2022, the complainant revised his request as follows:

"I would like to alter my request ...

my FOIA request is

As of today, 20 June 2022, what percentage of those on the DDP are considered by the HO to be:

1. Muslim extremists, also known as Islamists,
2. White supremacists".

7. On 28 June 2022, the Home Office wrote to the complainant to extend the time in which to provide a response whilst it considered the public interest test in sections 24 and 38 of FOIA.
8. The Home Office responded on 1 August 2022. It refused to provide the requested information citing sections 24(1), 38(1) and 40(2) of FOIA.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4018594/ic-69582-j3b0.pdf>

9. On the same day, the complainant requested an internal review; he did not provide any grounds for disagreeing with the Home Office's response.
10. Following an internal review, the Home Office wrote to the complainant on 23 September 2022. It maintained its position.

Scope of the case

11. The complainant contacted the Commissioner on 24 September 2022 to complain about the way his request for information had been handled. He said: "The information is not personal data as it does not relate to any identifiable person and release would not endanger anyone".
12. The Commissioner will consider the application of exemptions to the request below. He has viewed the withheld information.

Reasons for decision

Section 24 – National security

13. The Home Office has cited section 24 to cover the requested information in its entirety.
14. Section 23(1) of FOIA states 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).
15. Section 24 of FOIA states that information which does not fall within section 23(1) is exempt information if exemption from [the duty to communicate information] is required for the purpose of safeguarding national security.
16. 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.
17. The approach that the Commissioner takes to the term 'required' as it is used in this exemption is that this means 'reasonably necessary'. In effect, as per the Commissioner's section 24 guidance², although there has to be a real possibility that the disclosure of requested information would undermine national security, it is not necessary to show that disclosing the information would lead to a direct or immediate threat to the UK.

18. The Home Office has explained that:

"While the existence of the programme is public, the programme is of national security importance, and what information is disclosed about how it operates, and who is on the programme has to be carefully considered. It is important that we do not release information that could provide insight to 'malicious actors' into the day-to-day operations, the overall management of the programme, or inadvertently identify those on the programme".

19. The Home Office also explained to the Commissioner:

"It is important that we do not release information that is likely to provide insight to hostile actors into the day-to-day operations, the overall management of the programme, or inadvertently identify those on the programme, and that is what we are very mindful of if we were to disclose the requested information. If there were concerns that people could be identified as being on the programme, this could prevent referrals being made by operational

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-24-safeguarding-national-security/>

partners and/or discourage, or even bring a halt, to those engaging with the programme or the support it provides. This could have serious security implications and fundamentally undermine the effectiveness of the DDP as a counter-terrorism tool.

We are mindful of the fact that if we were to release in-year information in isolation (as has been requested) and we were then to receive a series of the same/similar requests over a period of time, our 'isolated' disclosures could be combined together to provide a fuller picture of the workings of the DDP and have an adverse effect on the UK's national security.

Even in isolation, such releases could be combined with other information from other external sources. Linking such information together could consequently reveal significant new information, which would in our view do harm. For example, this could reveal who is referred onto the programme, and build a more detailed picture of how resources are apportioned and to whom, and thereby helping to reveal any weaknesses in the DDP which could be exploited by malicious actors, thus compromising national security.

Release of the requested information would lead to legitimate concerns that people could be identified as being on the programme. There is scope for terrorists to seek to identify whether an individual continues to attend, or has ever attended, DDP sessions. This information could result in renewed efforts to radicalise those subject to DDP, or could result in those individuals being targeted due to no longer adhering to extremist ideology.

In summary, the DDP is part of a suite of measures employed by Home Office and partners to try and limit harm caused by terrorism, so any negative impacts on the programme which we believe would occur as a result of disclosing the requested information could have serious consequences in relation to the likelihood of future terrorist attacks and the safety of the public".

20. In respect of the "mosaic effect" argument, the case referred to at paragraph 4 above is noted. Furthermore, there is another similar request which the Commissioner is currently considering (IC-157476-J8V6).
21. Based on the arguments presented by the Home Office, the Commissioner is satisfied that this field of work falls within the remit of national security and that, on that basis, is it reasonably necessary to protect details regarding the DDP. He therefore finds that the exemption is properly engaged.

Public interest test

22. Section 24 is subject to the public interest test, as set out in section 2 of FOIA.
23. When requesting an internal review, and when submitting his complaint to the Commissioner, the complainant did not offer any public interest arguments.

Arguments in favour of disclosure

24. The Home Office argued that there is a general public interest in the disclosure of the information. It said that openness increases public trust and engagement.
25. The Home Office found that disclosure could help the public understand de-radicalisation issues.

Arguments in favour of maintaining the exemption

26. The Home Office submitted to the Commissioner that:

“... there is a very strong public interest in safeguarding national security. It is important that this sensitive information is protected, as disclosure of information at any given time – to the level of detail that has been requested in this case - would damage the aims of the DDP and potentially jeopardise the security threat to the UK. Revealing identifiable information about individuals could be used to the advantage of malicious actors to undermine the programme and/or represent a risk to those individuals participating. In either event, this would have a detrimental effect on public safety and security. Any disclosure that would prejudice national security would be contrary to the public interest, hence, why on balance, our view is that the public interest favours non-disclosure in this particular case”.

27. In correspondence with the Commissioner, the Home Office also referred to the mosaic effect, arguing: “We are mindful of the fact that if we were to release in-year information in isolation (as has been requested) and we were then to receive a series of the same/similar requests over a period of time, our ‘isolated’ disclosures could be combined together to provide a fuller picture of the workings of the DDP and have an adverse effect on the UK’s national security.

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referred onto the programme, and build a more detailed picture of how resources are apportioned and to whom, and thereby helping to reveal any weaknesses in the DDP which could be exploited by malicious actors, thus compromising national security”.

Balance of the public interest

28. The Commissioner accepts that FOIA gives individuals a right of access to official information with the intention of making public bodies more transparent and accountable. With that in mind, he recognises that disclosing the withheld information in this case would meet the public interest in transparency and accountability surrounding the DDP.
29. However, balanced against this, he must consider whether disclosure would have any effects which would run counter to the public interest in safeguarding national security, and if so, whether they are outweighed by the benefits of disclosure.
30. The Commissioner considers that there is a significant public interest in the government having an effective approach to de-radicalisation. He agrees with the Home Office that the DDP, which serves that very purpose, may be weakened by disclosure of the withheld information. Whilst he has not considered whether or not any individual could be identified by disclosure of the percentages requested, he notes the Home Office's arguments in engaging the exemption (see paragraph 19) which show the wider ramifications of disclosure of information from the programme.
31. The Commissioner considers that it is clearly the case that the public interest in disclosure does not match the weight of the public interest in safeguarding national security. It follows that his conclusion is that the balance of the public interest favours maintaining the section 24 exemption.
32. Therefore, his decision is that the Home Office was entitled to rely on section 24(1) of FOIA to refuse to disclose the withheld information.
33. As he has found section 24 to have been properly applied to the request in its entirety the Commissioner has not considered the other exemptions cited.

Right of appeal

34. 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

35. 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.
36. 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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