

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 June 2023

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

#### Decision (including any steps ordered)

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1. The complainant requested information from two specified reviews relating to offenders, including sex offenders. The Home Office provided the information pertaining to an **independent review** but refused to provide the requested information for that pertaining to the Home Office's own **internal review**. The Home Office cited section 31(1)(a) of FOIA (the exemption for the prevention or detection of crime) and section 35(1)(a) (the exemption for the formulation or development of government policy). The complainant was only concerned with the withheld information relating to the **internal review** part (part 1) of his request. During the course of the Commissioner's investigation, the Home Office additionally relied on section 40(2) of FOIA (the exemption for personal information).
2. The Commissioner's decision is that the Home Office was entitled to rely on section 35(1)(a) to refuse part 1 of the request. As he has determined that section 35(1)(a) is engaged, the Commissioner has not found it necessary to consider the Home Office's reliance on sections 35(1)(a) and 40(2) of FOIA.
3. The Commissioner requires no steps as a result of this decision.

#### Request and response

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4. On 8 July 2022, the complainant wrote to the Home Office and requested information in the following terms:

“Part 1 – Home Office’s **internal review** to better understand the nature of offenders, including registered sex offenders, changing their name, by deed poll or otherwise to facilitate further offending:

- If it has been completed, a copy of the final report as a whole, including all annexes, adjuncts, enclosures, findings, documents, evidence and any recommendations.
- If the review is yet to be completed, information as to the date when it is required and/or expected to be completed and when the final report/findings document will be completed, and whether or not the decision has been changed, to publish the entire findings in the public domain.”

Part 2 - information related to the **independent review** into the police management of registered sex offenders in the community:

- “Information as to the date when it is required and/or expected to be completed and when the final report/findings document will be completed, and whether or not a decision has been made, to publish the entire findings in the public domain.
- The full details of the scope and purpose of the independent review, and whether or not it has statutory powers to compel those within HM Government to take action, when deficiencies are found within processes.”

5. The Home Office responded on 29 July 2022. It refused to provide the requested information for the **internal review** (part 1) citing the following exemptions as its basis for doing so:

- Section 31(1)(a) – the prevention or detection of crime
- Section 35(1)(a) – the formulation or development of government policy

It provided the information requested for the **independent review** (part 2 of the request).

6. The complainant requested an (FOIA) internal review on 15 August 2022 focussing only on part 1 of his request (the Home Office’s **internal review**). He provided reasons as to what information he believes could be disclosed and requested further information as to “whether or not the subject of sex offenders changing their name without notifying the police will be covered, and the evidence in relation to that, will be reviewed and disclosed”.

7. In the absence of any internal review response, the complainant sent three emails requesting the Home Office to provide it.

## Scope of the case

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8. The complainant contacted the Commissioner on 3 November 2022 to complain about the way his request for information had been handled. He initially complained about the then outstanding internal review.
9. The following day (ie 4 November 2022), the Home Office provided the outcome of its internal review, late, in which it maintained its original position. It indicated that it had also responded to the complainant's additional point set out in paragraph 6 of this notice. However, the Commissioner was not able to locate the Home Office's response to this additional point within the internal review result itself, so he sought clarification from the Home Office on this aspect.
10. On 10 November 2022, the complainant contacted the Commissioner to advise that he remained dissatisfied following the internal review result.
11. On 12 May 2023, as part of its investigation response, the Home Office said it wished to rely on section 40(2) of FOIA for those parts of the requested information it deemed to constitute personal information. The Home Office also notified the complainant about this newly cited exemption.
12. On 23 May 2023, during the Commissioner's investigation, the Home Office advised the following:

"In the terms of reference for the Independent Review into the police-led management of registered sex offenders in the community, it was not specified that the subject of registered sex offenders changing their name without notifying the police would be among the scope or aims of the review.

On 27 April 2023, the Executive Summary of the Independent Review was published on Gov.UK. In this document, Mr. Creedon wrote 'In undertaking this review, I was aware that the Home Office was carrying out an internal review to consider the impact of convicted sex offenders changing their names. As this was not a substantial issue raised by forces, and to avoid duplication of effort, this is not a topic that has been explored further within this review.' The published document can be found here: [Independent review of police-led sex offender management - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115422/independent-review-of-police-led-sex-offender-management-2023.pdf)."

13. The Commissioner has included the above response in the event that it has not been conveyed to the complainant, but it covers the additional point that he raised.
14. On 1 June 2023, the complainant advised that he had no objection to any names being redacted should the information be disclosed.
15. On 5 June 2023, the complainant made a further submission, just prior to the issuing of this notice, which the Commissioner has considered. He provided details of an FOIA request made to the Crown Prosecution Service in which the numbers of sex offenders arrested, charged and convicted and those having their convictions overturned were provided (for the period late November 2003 until mid August 2022). The complainant argued that this reveals that the scale of the problem is known and is already in the public domain, contrary to what the Home Office stated in its final response.
16. The Commissioner has further reviewed the Home Office's responses to the complainant in light of his submission above. He does not consider that the argument is relevant to the Home Office's application of section 35 of FOIA.
17. The Commissioner has first considered whether the Home Office was entitled to rely on section 35 of FOIA for part 1 of the request; it has been cited in respect of the withheld information in its entirety. He has viewed the withheld information.

## **Reasons for decision**

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### **Section 35 – Formulation of government policy etc**

18. Section 35(1)(a) provides that information held by a government department is exempt from disclosure if it relates to the formulation or development of government policy. The Commissioner understands these terms to refer to the design of new policy, and to the process of reviewing or improving existing policy. The exemption is subject to the public interest test.
19. 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.
20. The exemption is class based and so it is only necessary for the withheld information to 'relate to' the formulation or development of government policy for the exemption to be engaged. The Commissioner considers

that the term 'relate to' can be interpreted broadly. Any significant link between the information and the process by which government either formulates or develops its policy will be sufficient to engage the exemption.

21. The Commissioner takes the view that the formulation of policy comprises the early stages of the policymaking process where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers.
22. Development may go beyond this stage, to the processes involved in improving or altering existing policy, such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
23. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the content of the information in question and its context.
24. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
  - The final decision will be made either by the Cabinet or the relevant Minister;
  - The Government intends to achieve a particular outcome or change in the real world; and
  - The consequences of the decision will be wide-ranging.
25. The withheld information in this case comprises information on the subject of offenders changing their names. The Home Office has explained that the policy to which the requested information relates is:

"An internal review of the effectiveness of the name change process in safeguarding against serious harm."
26. The Home Office explained in its (FOIA) internal review result that:

"The exemption at section 35(1)(a) has been engaged in this instance to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and would result in less robust, well-considered or effective policies. In particular, it ensures a safe space to consider policy options in private. The disclosure of the information at an early stage of policy development would hinder the ability of officials to explore and discuss all available options in a free and frank manner, and to understand their possible implications. This is because, it would place sensitive information in the public domain which

could be used to interfere with, disrupt or undermine those deliberations by those who disagree with the overarching aims of the review. A safe space is required to prevent policy makers getting unduly distracted, which would be harmful to the quality of the debate and would hinder effective decision making."

27. The Home Office told the Commissioner that, at the time of the request and at the time of the (FOIA) internal review response, the review was nearing completion but had not yet been finalised. It said that advice had not been submitted to Ministers and decisions had not been taken at that time. The Home Office confirmed that decisions were taken by Ministers in March 2023.
28. Having viewed the withheld information (and mindful of the purpose of the exemption) the Commissioner is satisfied that, at the time of the request, it related directly to the formulation of government policy on the effectiveness of the name change process in safeguarding against serious harm and that each of the criteria set out in paragraph 24 is met. The exemption at section 35(1)(a) of FOIA is therefore engaged.

### **Public interest test**

29. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the withheld information.

### **Public interest arguments in favour of disclosure**

30. The complainant argued that the disclosure of the requested information:

"in relation to such a matter of public importance, would obviously out way [sic] any reasons not to disclose the information".

31. The Home Office set out the following arguments:

"The Home Office endeavours to be open and honest about the vulnerabilities in the system and the action that Government is taking to address, so that the public and other bodies can themselves, take necessary precautions."

### **Public interest arguments in favour of maintaining the exemption**

32. The Home Office submitted the following arguments:

"Both at the time of this request and at the time of the FOI internal review response, the policy was still in development. It

was important that officials had the safe space to carry out the review and ministers had the safe space to consider the outcome of the review and take decisions. To release information prior to this would have put undue pressure on officials and ministers and would have led to poorer decision making and officials would have been reluctant to provide such free and frank advice and assessments within the review, for fear of release. Even now we contend that it is in the public interest to withhold the information before the government introduces the additional safeguards as intended. To do otherwise, would risk the harm identified in the review and would clearly not be in the public interest.

The DBS [Disclosure and Barring Service] provided substantial information to inform the review, which was provided in confidence to Ministers.”

### **Balance of the public interest**

33. The Commissioner accepts that there is a public interest in the disclosure of information which can inform public understanding of how widespread the problem of offenders changing their name with a view to potentially committing further offences is, and of the Government's strategies for combatting it. The question for the Commissioner to consider is whether the arguments in favour of maintaining the exemption are stronger.
34. The relevance and weight of public interest arguments will depend on the content and sensitivity of the particular information in question and the effect its release would have in all the circumstances of the case. Once a policy decision has been finalised and the policy process is complete, the sensitivity of information relating to that policy will generally start to wane, and public interest arguments for protecting the policy process become weaker. If the request is made after the policy process is complete, that particular process can no longer be harmed. As such, the exact timing of a request will be very important.
35. In this case, the Commissioner notes that the withheld information contains highly sensitive information. It was clearly a 'live' matter both at the time of the request and the (FOIA) internal review. As such, the Commissioner considers that there is a clear and strong public interest in protecting this policymaking process.
36. The Commissioner accepts that the Government needs a safe space to develop ideas, debate live issues and reach decisions away from external interference and distraction on this matter. The disclosure of the withheld information at such an early stage of policy development would hinder the ability of officials to explore and discuss all available

options in a free and frank manner, and to understand all possible implications. The withheld information would, to some extent, reveal details of policy discussions and options being considered. A safe space is required to prevent disclosure resulting in policymakers being unduly distracted or side-tracked by external debate on the matter, which would be harmful to the process of effective, informed decision making.

37. Disclosure would also place in the public domain highly sensitive information about the name change process relating to offenders and the strategies for dealing with this issue. The Commissioner considers it likely that, in future, key stakeholders could be less willing to share sensitive information if they believe it may be disclosed in response to an FOIA request. Clearly, any action which may result in a lack of willing cooperation, and valuable input, from those who can provide expertise from a wide range of backgrounds, would result in poorer, less well informed policymaking.
38. It has been generally accepted, by both the Commissioner and the First-tier Tribunal, that significant weight should be given to maintaining the exemption where a valid need for a safe space is identified. A compelling public interest in favour of disclosure is required when a need for safe space is demonstrated. The Commissioner has seen no such argument in this case.
39. The public interest in the Government being able to develop an effective and well designed response to the effectiveness of the name change process in safeguarding against serious harm, without being subject to unnecessary disruption when doing so, is the overwhelming factor in maintaining the exemption in the circumstances of this case. The Commissioner therefore considers that greater weight can be afforded to the public interest argument in favour of protecting the safe space in which policy matters are discussed.
40. The Commissioner's decision is therefore that, in the circumstances of this case, the public interest favours maintaining the exemption. The Commissioner is satisfied that, at the time of the request, the information related to live policy formulation and that there is a stronger public interest in protecting the space in which that policy is being developed rather than in disclosing the information. It follows that the Home Office was entitled to rely on section 35(1)(a) to refuse the request.
41. As the Commissioner has found section 35(1)(a) of FOIA to be engaged, he does not deem it necessary to consider the Home Office's reliance on sections 31(1)(e) and 40(2) of FOIA.



## Other matters

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42. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA. Part 5 of the section 45 Code of Practice<sup>1</sup> (the Code) states that it is best practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Code states that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
43. Although the Commissioner notes that there are sensitivities around this case because of the subject matter and the exemptions relied on, he is nevertheless concerned that it took almost three months for an internal review to be completed.
44. 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 strategy<sup>2</sup> 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 Manual<sup>3</sup>.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

<sup>2</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>3</sup> [https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1\\_0.pdf](https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf)

## Right of appeal

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45. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.

47. 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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