

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2023

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

Decision (including any steps ordered)

1. The complainant has requested information on the withdrawal of police protection services for the Duke and Duchess of Sussex. The Home Office said that it did not hold the majority of the information described in the request, although it confirmed the date that security for the couple ended.
2. The Commissioner's decision is that, on the balance of probabilities, the Home Office does not hold the information described in the request.
3. No steps are required as a result of this decision.

Background

4. The complainant originally submitted this request to the Home Office on 9 March 2021. The Home Office responded by neither confirming nor denying whether it held the information, citing the exemptions at sections 23(5) (Information supplied by or relating to, bodies dealing with security matters), 24(2) (National security), 31(3) (Law enforcement) and 38(2) (Health and Safety) of FOIA.
5. The complainant asked the Commissioner to investigate the response. During that investigation, the Home Office maintained that the exemptions had been applied correctly. However, writing in November 2022, the Home Office acknowledged that more information about the matter had recently entered the public domain than was available in March 2021 (when the request was received). As a result, it said it was

now able to confirm that, in fact, the Home Office did not hold the information specified in the request.

6. The complainant expressed dissatisfaction with the Home Office's 'not held' position. However, as the 'not held' position took account of circumstances as they were in November 2022, the Commissioner was unable to consider it under his existing investigation, which was restricted to considering the request in the context of the circumstances as they were in March 2021.
7. Rather than require the complainant to submit a fresh request for the information, the Home Office agreed that it would treat the request as though it had been submitted afresh, on 9 November 2022 (the date of its 'not held' response) and that the Commissioner would then consider whether its 'not held' response complied with FOIA.
8. The Commissioner considers that, for all parties, this was a pragmatic way of addressing the complainant's concerns, which had clearly shifted focus as a result of the Home Office's 'not held' response, without incurring further delays.

Request and response

9. On 9 November 2022, the Home Office treated the following request for information as having been re-submitted by the complainant:

"According to media reports, the Metropolitan Police's "Protection Command", the branch of the service that protects members of the Royal Family, was instructed to withdraw their service from the Duke and Duchess of Sussex.

1. On what date did the Home Secretary request, decide, or approve this decision?
2. On what date did the Assistant Commissioner, Lucy d'Orsi, request, decide, or approve this decision?
3. On what date was the protection finally withdrawn?
4. Which Government agencies provided advice to the Home Secretary on the risk assessment?
5. Which Government agencies provided legal advice, if any, to the Home Secretary?
6. Did the Home Secretary consult the Cabinet when requesting, deciding, or approving to withdraw Protection Command's service?

7. What was the estimated annual cost of continuing to provide the security protection offered by Protection Command to the Duke and Duchess of Sussex had the decision to terminate protection not been made?"

10. The Home Office responded on 9 November 2022, as follows:

"In light of changes in circumstances since your original request, I have reconsidered your request for information on the security arrangements surrounding The Duke and Duchess of Sussex within the provisions set out by the Freedom of Information Act 2000.

In response to questions 1, 4, 5 and 6, I can confirm the Home Office does not hold the information you have requested. This is because decisions regarding protective security are taken by the Executive Committee for the Protection of Royalty and Public Figures and not the Home Secretary. The Home Secretary is responsible to Parliament for their decisions, but does not make them. Accordingly, questions 1, 4, 5 and 6 are predicated on a mistaken assumption.

In response to question 2, I can confirm that the Home Office does not hold information relevant to that which you have requested. While the Metropolitan Police is a member of the Executive Committee for the Protection of Royalty and Public Figures, as mentioned above, it is this Committee that takes decisions regarding protective security and not any one individual or organisation. Accordingly, question 2 is predicated on a mistaken assumption.

In response to question 3, it is public knowledge that the Duke and Duchess of Sussex stepped down from their roles as working members of the Royal Family on 31 March 2020, and that police protective security arrangements were concluded on 12 April 2020.

Finally in response to question 7, I can confirm the Home Office does not hold the information you have requested."

11. On 10 November 2022, the complainant wrote to the Home Office, challenging its response, stating:

"In an approved judgment by Mr Justice Swift between the Secretary of State for the Home Department (the "Home Secretary") and The Queen on the application of the Duke of Sussex (R (Duke of Sussex) v SSHD CO/32242021) (the "Judgment"), his honour states the following in Part A, The Introduction:

'The Home Secretary, the Defendant to these proceedings, is the government minister responsible for protective security provided to members of the Royal Family and other public figures. She has

delegated her responsibility for the protective security arrangement to RAVEC [the Royal and VIP Executive Committee] **and is responsible in law for RAVEC's decisions.**"

12. The complainant argued that his request should therefore be interpreted as being for information held by the Home Office as a whole.
13. In view of the background to the request, the Commissioner did not require the Home Office to conduct an internal review of its decision and the case was accepted for investigation.

Reasons for decision

Section 1 - General right of access

14. Section 1(1) of FOIA states:

"Any person making a request for information to a public authority is entitled-

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

15. The Home Office confirmed the date that police protection services for the Duke and Duchess of Sussex ended, and so the Commissioner has not considered its response to part (3) of the request in this decision notice. His investigation has considered whether, on the balance of probabilities, the Home Office holds the information described in parts (1) - (2) and (4) - (7) of the request.
16. The Home Office considered that parts (1), (4), (5) and (6) of the request focused on the involvement of the Home Secretary in the decision to end police protection for the Duke and Duchess of Sussex, while part (2) focused on (and specifically named) the involvement of the then Deputy Assistant Commissioner of the Metropolitan Police Service ('the MPS').
17. The Home Office explained that decisions about protection for royalty and VIPs are made entirely by the Executive Committee for the Protection of Royalty and Public Figures (known as 'RAVEC'). Membership of RAVEC comprises Home Office officials, the MPS and members of the Royal Household. Neither the Home Secretary, nor the then Deputy Assistant Commissioner of the MPS, requested, decided, or approved the decision that the request asks about. Therefore, the Home

Office said it held no recorded information from which it could respond to those parts of the request.

18. The complainant has referred to a judgment which states that the Home Secretary is responsible in law for RAVEC's decisions¹. He argues that, for the purposes of his request, the two should be read as synonymous.
19. The Home Office has responded that the request was specifically focused on the individual roles and decisions of the Home Secretary and the then Deputy Assistant Commissioner of the MPS, and not on the wider department.
20. It said:

"The questions specifically referenced the Home Secretary (and another named individual) rather than the Home Office. The reasonable interpretation of those questions was that the requester was specifically seeking information about the role of, and information available to, the most senior Minister responsible for the relevant area. Had the requester intended to refer to the Home Office more generally, it would have been straightforward for him to say so. The framing of some of the questions underscores that the requester was referring specifically to the Home Secretary; for example, question 6 concerns the Home Secretary's consultation of Cabinet in relation to the decision, which can only have been a reference to the Secretary of State, and not her officials.

There is a material difference, including in public interest terms, between officials who work in the Home Office, for which the Home Secretary is ultimately responsible, and the Home Secretary personally. The response provided to the requester made clear the interpretation adopted, and explained why information was not held responsive to it as a result, in accordance with the Home Office's section 16 FOIA duties. The requester was informed that his focus on the Home Secretary was as the result of a misapprehension; accordingly, the requester was informed of information he may not previously have been aware of. This allows the requester, and other requesters, to make differently framed requests in future on a correctly informed basis."

21. With regard to the complainant's specific point that the Home Secretary was legally responsible for RAVEC's decisions, the Home Office said:

¹ Paragraph 1, <https://www.judiciary.uk/wp-content/uploads/2022/07/Duke-of-Sussex-v-Home-Secretary-judgment-220722.pdf>

"The judgment correctly notes that the Home Secretary is responsible in law for RAVEC's decisions, but it also emphasises that the decisions in question were those of RAVEC and not the Home Secretary. The requester's original questions specifically concerned the Home Secretary. Arguments based upon the Home Secretary's legal responsibility for decisions of RAVEC do not address the choice made in how the request was framed; the request was not drafted by reference to legal responsibilities but by reference to involvement in the decision-making.

It is also to be noted that under FOIA, it is the Home Office (and not the Home Secretary) which is the relevant public authority: in the context of a FOIA request, a reference to "the Home Secretary" cannot be read as short-hand for all information held anywhere within the Home Office".

22. Similarly, the Home Office said that as the then Deputy Assistant Commissioner of the MPS did not request, decide, or approve the decision (it being made, instead, by members of RAVEC), it did not hold the information requested in part (2) of the request.
23. Section 8(1)(c) of FOIA states that, to be valid, a request for information must describe the information requested. Then, if held, section 1(1)(b) states that the information must be provided (unless an exemption applies).
24. The Commissioner agrees with the Home Office that the information described in the request was information on the involvement of the Home Secretary and the then Deputy Assistant Commissioner of the MPS, in the decision to withdraw police protection. He is satisfied that the Home Office's interpretation of the request was objective and reasonable and that, as it is RAVEC which makes the decisions referred to in the request, on the balance of probabilities, the requested information is not held by the Home Office and, therefore, it cannot be disclosed.
25. The Commissioner acknowledges that the determination of this request rests on its interpretation. The Home Office has clarified the Home Secretary's role in such decisions, allowing future requests for similar information to be worded in a way that reflects this. The Commissioner considers that this satisfies the duty to provide advice and assistance, under section 16 of FOIA.
26. Turning to part (7) of the request, which asked for the projected costs of police protection for the Duke and Duchess of Sussex, had it not been withdrawn, the Home Office's position is that it does not hold this information.

27. The Home Office has provided the Commissioner with a cogent explanation as to why it does not hold this information. The Commissioner cannot reproduce its arguments here, as they contain information which would be exempt under the exemptions cited in paragraph 4, above.
28. He can say that he is satisfied from the explanation the Home Office has provided to him, that, on the balance of probabilities, the Home Office does not hold the information described in part (7) of the request.
29. More generally, he notes that, even if it was held, the Home Office regards information relating to the costs of protective security as exempt, under sections 24, 31 and 38 of FOIA. Information concerning the costs of protective security can be used to discern the level of protective security in place, and therefore the vulnerability of any targets, and so should be protected. The Commissioner has accepted such arguments in similar cases and his decision has been upheld by the First-tier Tribunal².
30. Taking all the above into account, the Commissioner's decision is that, on the balance of probabilities, the Home Office does not hold the information requested in parts (1) – (2) and (4) – (7) of the request. He is therefore satisfied that the Home Office complied with its obligations under section 1 of FOIA.

Other matters

31. The Commissioner recognises that the Home Office took too long to deal with the request when it was initially submitted in March 2021. He has made a note of those delays for monitoring purposes.

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<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i685/20120224%20Decision%20corrected%2013032012%20EA20110186.pdf>

Right of appeal

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

33. 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.
34. 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

Samantha Bracegirdle
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