

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 September 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested, from the Home Office, details of any assistance provided by the UK to Hungary to support its border security or immigration activities in 2022. The Home Office would neither confirm nor deny holding any information, citing sections 27(4) (International relations) and 31(3) (Law enforcement) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 31(3) and that the public interest favours maintaining the exclusion. No steps are required.

#### **Request and response**

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3. On 9 January 2023, the complainant wrote to the Home Office and requested the following information:

"I would like to make a FOI request for the following information:

Please can you provide details of any assistance provided by the UK to Hungary to support its border security or immigration activities, in each of the years 2020, 2021, and 2022.

Please let me know if you require any clarification - this email address is my preferred form of contact".

4. Following further correspondence, on 10 February 2023 the complainant submitted the following refined request:

“I would be happy for you to narrow the timescale to solely the year 2022”.

5. On 20 February 2023, the Home Office responded. It refused to provide the requested information, citing section 31(1)(a) of FOIA.
6. The complainant requested an internal review on 9 March 2023. He said:

“First, the Home Office and other Government departments have on several recent occasions actively and publicly highlighted support the UK is providing to other countries in this policy area: for example, the provision of personnel to support border security measures in Poland and Lithuania; the provision of funding to migration activities in France; and the provision of Border Force vessels and personnel to Greece. In the light of these it is difficult to see how it can justify not providing at least the same level of information with regard to any support to Hungary.

Second, the Home Office has refused to release any information about support to Hungary. It is difficult to see how a broad summary of the support could prejudice the detection of crime/operation of immigration controls. The possibility of providing a response with details which could do so removed/redacted does not even seem to have been considered.

Third, the Home Office has previously released such information in response to requests regarding other countries (eg Greece, Poland) - this response therefore appears to be at odds with its own previous position”.

7. The Home Office provided an internal review on 15 May 2023 in which it revised its position. It would neither confirm nor deny holding the requested information, citing sections 27(4) and 31(3) of FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 9 June 2023 to complain about the way his request for information had been handled. He said:

“I believe this is an unjustified level of secrecy and at odds with previous precedents on the release of similar information.

First, it is hard to see how simply confirming the fact that support is provided (or not) could endanger either law enforcement or international relations.

Second, the Home Office does not appear to have made any attempt to redact/remove sensitive information, allowing them to release broader information which did not engage these exemptions - for example I would be happy for them to withhold any details relating to active law enforcement investigations.

Third, the Home Office (and other government departments) have previously proactively released information on support provided to migration/border security activities in other countries - see, for example: <https://www.gov.uk/government/publications/uk-greece-migration-action-plan>

I believe the Home Office should release the information requested, allowing for redactions of specific information which falls into the exemptions they have cited”.

9. The Commissioner does not know whether or not any information is held. He does not consider this is necessary in order for him to reach a decision in this case.
10. The Commissioner will consider the citing of exemptions below.

## **Reasons for decision**

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### **Neither confirm nor deny (“NCND”)**

11. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is commonly known as “the duty to confirm or deny”. However, there are exemptions to this duty, whereby a public authority may NCND whether it holds the requested information.
12. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
13. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny

being taken by requesters as an indication of whether or not information is in fact held.

14. The Home Office has taken the position of neither confirming nor denying whether it holds any of the requested information in its entirety, citing sections 27(4) and 31(3) of FOIA. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not the Home Office is entitled to NCND whether it holds any information of the type requested by the complainant.
15. Put simply, in this case the Commissioner must consider whether or not the Home Office is entitled to NCND whether it holds any information on whether the UK has provided assistance to Hungary in support of its border security or immigration activities.

### **Section 31 – Law enforcement**

16. The Home Office has relied on the NCND exclusion on the basis that confirming or denying whether it holds information within the scope of the request would be likely to prejudice both the prevention or detection of crime and the operation of the immigration controls, the exemptions at sections 31(1)(a) and (e) of FOIA.
17. The exemptions are subject to a public interest test. This means that the information must be disclosed if the public interest in disclosing the information is equal to, or greater than, the public interest in protecting the matters at subsections (a) and (e).
18. The complainant's views are in paragraph 8 above. Regarding his statement that the Home Office has set a previous precedent, the Home Office has responded, saying:

“Where the Home Office has provided such information in the past it has done so with the agreement of, and often in collaboration with, the country or the organisation with which it is cooperating. Such releases in and of themselves do not set a precedent as they will relate to a specific activity or event that both parties have agreed to make public. They will often refer to joint initiatives or successful interventions where both parties have agreed there is a public interest in releasing such information.

Whilst [the complainant] has cited such releases as a precedent and a reason why the Home Office should release the information that has been requested (or in this case confirm whether information is held), it should be noted that these releases were under very

specific criteria and would have only contained information that both parties were willing to put out in the public domain”.

19. Also, where the complainant has argued that redacted information could be disclosed, the Commissioner does not consider this relevant where the issue being considered is that of the harm in confirmation or denial, rather than disclosure.

20. The Home Office explained to the complainant:

“To confirm or deny whether any assistance was provided by the UK to Hungary in support of its border security or immigration activities would, by its very nature, disclose where the Home Office was actively engaged with some countries but not others which would be likely to affect their ability to work together effectively. This would negatively impact the law enforcement agencies of both countries. To confirm whether information is held would be likely to in itself cause the harm that the exemptions are designed to protect”.

21. In correspondence with the Commissioner, the Home Office explained:

“Disclosure of whether or not the Home Office is providing assistance to an international partner will allow Organised Crime Groups (OCGs) or persons that are seeking to circumvent UK immigration controls to build up a picture of our capabilities and vulnerabilities that can be used to their advantage.

Regarding the prevention and detection of crime - OCGs that are involved in the smuggling of commodities, illicit goods, and persons will continuously adapt their routing in an attempt to evade detection at the UK border. The Home Office works with international partners such as law enforcement and border control agencies of countries across the globe to tackle upstream threats and disrupt threats at either the source or earlier in the route. Once a modus operandi is identified the Home Office will use this information to target vehicles and goods that are headed to the United Kingdom. In the same way OCGs will piece together information that is in the public domain to adapt their methodology to prevent interception at the UK border. The greater the knowledge that OCGs have of the engagement and assistance that the Home Office is providing overseas, the more they will use this information to their advantage to evade detection. Even confirming whether assistance has been provided to a particular country will in itself provide useful information to OCGs and will harm the Home Office's ability to protect the safety and security of the United Kingdom and its citizens from threats such as illicit drugs and

psychotropic substances, modern slavery and human trafficking, and terrorism. It will also harm the Home Office's ability to tackle offences that have a financial impact on the prosperity of the United Kingdom such as intellectual property rights abuse, and the smuggling of goods that are subject to duties.

In terms of prejudice to the operation of immigration controls, people seeking to evade detection at the border by travelling on documents to which they are not entitled to will use information that is in the public domain to identify routes where they will have the best opportunity to travel undetected".

22. The Home Office provided other arguments to the Commissioner in confidence. These have been taken into consideration but not cited in this notice.
23. Having considered the wording of the request, and the arguments made, the Commissioner is satisfied that the envisaged harm relates to both the prevention or detection of crime and the operation of the immigration controls. The harm that the Home Office focused on in its response is the circumvention of immigration controls in order to commit criminal activity; clearly this is a serious matter. To confirm or deny whether there is cooperation between the two countries would reveal law enforcement capabilities that are currently unknown.
24. The Home Office has said that it is relying on the lower level of likelihood of the prejudice occurring, ie the prejudice "would be likely to" occur. The test that the Commissioner applies when considering whether prejudice "would be likely" is that there must be a real and significant likelihood of prejudice occurring, but it is not necessary for this outcome to be more probable than not.
25. Applying that test here, the Commissioner accepts that there is a real and significant likelihood of prejudice relevant to sections 31(1)(a) and (e) through confirmation or denial being provided in this case. This could be of use to those wanting to build a picture of border control operations to identify strengths and exploit weaknesses. While the Commissioner does not suggest that this is the complainant's purpose in requesting the information, he must bear in mind that disclosure under FOIA is to be considered as being to the world at large.
26. The Commissioner therefore accepts that confirmation or denial would be likely to prejudice law enforcement operations and the operation of border controls. He is therefore satisfied that the exemptions at sections 31(1)(a) and (e) provide grounds for neither confirming nor denying whether information is held in this case.

### **Public interest test**

27. As explained above, the Commissioner must nevertheless consider whether the public interest in refusing to confirm or deny whether information is held outweighs the public interest in providing such a confirmation or denial.

### **Public interest arguments in favour of confirmation or denial**

28. The complainant did not provide any arguments.

29. The Home Office recognised:

“... that there is a general public interest in transparency and openness in Government. In particular, the Home Office recognises that any details related to illegal migration and the bilateral relationship between UK and Hungary in tackling such events, are of significant and legitimate public interest”.

### **Public interest arguments against confirmation or denial**

30. The Home Office has argued:

“Confirming or denying that the information in question is held would be likely to damage the ability of both British and Hungarian law enforcement agencies to operate effectively.

... this would reduce the UK’s ability to successfully detect and prevent crime or operate an effective immigration control. There is a very strong public interest in not prejudicing our ability to protect UK interests at home and abroad. We believe the public interest falls firmly on the side of neither confirming nor denying whether information is held”.

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

31. The Commissioner agrees that there is a public interest in transparency and accountability, and in understanding the ways in which the UK interacts with other nations. There is also a public interest in people being able to understand the protections in place to ensure that law enforcement capabilities are being properly considered.
32. The Commissioner also recognises there is a public interest in informing people about the work involved in the UK’s border control operations.
33. However, he also recognises the strong public interest in protecting the ability of the Home Office to enforce the law and to protect borders. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – in this case, it would not be

in the public interest to prejudice law enforcement operations and the capabilities of border controls by providing confirmation or denial as to whether the UK is cooperating with a particular country. Doing so could place the UK at increased risk of harm.

34. The Commissioner considers that on balance, the factors against confirming or denying in this case have greater weight and he finds that the public interest lies in maintaining the exemption. Consequently, he finds that section 31(3) of FOIA was correctly applied to the request.
35. As the Commissioner has determined that the Home Office was correct to rely on section 31(3) of FOIA to NCND holding the requested information he has not found it necessary to go on to consider the application of section 27(4).



## Right of appeal

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36. 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)

37. 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.
38. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**