

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about whether an organisation is proscribed, from the Home Office. The Home Office would neither confirm nor deny ("NCND") holding any information, citing sections 23(5) (Information supplied by, or relating to, bodies dealing with security matters), 24(2) (National security) and 27(4) (International relations) of FOIA
2. The Commissioner's decision is that the Home Office was not entitled to NCND holding any information. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation:
 - issue a fresh response confirming whether or not any information is held. If it is held, it should either be disclosed or the Home Office should issue a refusal notice in compliance with section 17 of FOIA.
3. The Home Office must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 13 December 2023, the complainant wrote to the Home Office and requested the following information:

“Under the Terrorism Act 2000, the Home Secretary may proscribe an organisation if they believe it is concerned in terrorism, and it is proportionate to do.

Provide all information produced in the last 5 years regarding whether Hizb ut-Tahrir should be made a proscribed organisation”.

5. On 20 December 2023, the Home Office responded. It would NCND holding any information, citing sections 23(5), 24(2) and 27(4) of FOIA as its basis for doing so.
6. The complainant requested an internal review on 21 December 2023.
7. Despite several contacts being made by the complainant, the Home Office failed to provide an internal review.

Scope of the case

8. The complainant contacted the Commissioner on 11 April 2024 to complain about the way his request for information had been handled, ie the lack of internal review.
9. On 1 May 2024, the Commissioner advised both the Home Office and the complainant that he would use his discretion to proceed directly to a decision notice without an internal review.

Reasons for decision

Neither confirm nor deny (“NCND”)

10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
11. 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.
12. 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.
13. 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 23(5), 24(2) and 27(4) 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.

14. Put simply, in this case the Commissioner must consider whether or not the Home Office is entitled to NCND whether it holds any information about whether Hizb ut-Tahrir should be made a proscribed organisation.
15. The Home Office has said that the information described in the request, if it was held, would be fully exempt from disclosure by virtue of the exemptions cited.

The Commissioner's view

16. Having undertaken initial research regarding the requested information, the Commissioner has located the following official statement which was published on 19 January 2024¹:

"The organisation Hizb ut-Tahrir has been proscribed as a terrorist organisation today (19 January) after Parliament approved a draft order laid on Monday (15 January).

This order makes belonging to Hizb ut-Tahrir or inviting support for the group a criminal offence, with a potential prison sentence of 14 years which can be handed down alongside or in place of a fine".

17. Whilst this postdates the wording of the request, it was clearly the position prior to internal review, ie the Home Office's final position in respect of the request.
18. Accordingly, the Commissioner considers the NCND position adopted by the Home Office to be untenable. It is therefore required to take the step ordered at paragraph 2 above.

Other matters

19. Although they do not form part of this notice the Commissioner wishes to highlight the following matter of concern.
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¹ <https://www.gov.uk/government/news/hizb-ut-tahrir-proscribed-as-terrorist-organisation>

Section 45 – internal review

20. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
21. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
22. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, the Home Office has not acted in accordance with the section 45 code.
23. This will be logged for monitoring purposes.

Right of appeal

24. 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

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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carolyn Howes
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