



Neutral citation number: [2024] UKFTT 296 (GRC)

Case Reference: EA/2021/0268

**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Heard at: Field House, London  
Heard on: 26 and 27 April 2023  
Decision given on: 15 April 2024**

**Before**

**JUDGE NEVILLE  
MEMBER S COSGRAVE  
MEMBER A CHAFER**

**Between**

**RIGHTS & SECURITY INTERNATIONAL**

Appellant

**and**

**(1) INFORMATION COMMISSIONER  
(2) HOME OFFICE**

Respondent(s)

**Representation:**

For the Appellant: Ms A Littlewood, counsel

For the Respondent: Mr C Knight, counsel

For the Second Respondent: Mr A Deakin, counsel

**Decision:** The appeal is dismissed.

**REASONS**

## What we have decided

1. The information requested by Rights & Security International (“RSI”) under the Freedom of Information 2000 is exempt from disclosure under either section 23(1) (information directly or indirectly supplied by, or relating to, one of various specified bodies concerned with national security), or section 24(1) (exemption required for the purpose of national security). The Home Office is entitled to withhold which of those exemptions actually applies. The Commissioner’s Decision Notice to the same effect was correct and the appeal is dismissed. It has been unnecessary to address other exemptions upon which the Home Office no longer relies.
2. There are separate CLOSED reasons that set out which of the two exemptions applies, and why. We have nonetheless sought to include as much detail as possible in these OPEN reasons.

## Introduction

3. The resolution of this appeal was first delayed by restrictions surrounding the Covid-19 pandemic, then lack of judicial availability, then an adjournment necessitated by the conduct of the Home Office, then the need to find additional time for panel deliberation, all compounded by the administrative pressures and practical obstacles facing the Tribunal when dealing with evidence of the sensitivity with which this case is concerned. On behalf of the Tribunal we apologise to the parties for this delay.
4. Rights & Security International (“RSI”) is a well-established charity concerned with the interface between individual rights and government actions taken to protect national security. On 14 December 2020 it made a request under the Freedom of Information Act 2000 (“FOIA”) to the Home Office for the following information:
  - a. The annual figure for the number of individuals who have been deprived of their British nationality pursuant to section 40(2) [of the British Nationality Act 1981] during the year 2019 (the figures released previously in HM Government Transparency Reports);
  - b. The figure to date for 2020;
  - c. For each of the above figures, how many of the individuals were women; and
  - d. If parents of minor children, how many minor children did they have at the time of deprivation.
5. Section 40(2) of the 1981 Act provides that the Secretary of State may deprive a person of British citizenship (or one of a listed number of related citizenship statuses) if he is satisfied that deprivation is conducive to the public good. An explanation of how that power operates and the principles behind it can be found in the Supreme Court’s decision of R. (Begum) v Special Immigration Appeals Commission [2021] UKSC 7.
6. The figures at Requests (a) and (b) above were subsequently published<sup>i</sup> so form no part of the appeal before us. We are concerned with the remainder. In its revised response to the request dated 25 June 2021 the Home Office confirmed that it held the requested information but relied on two exemptions from the duty to disclose it: first, under s.23(1), that the requested information was directly or indirectly supplied by, or relates to, a

specified body concerned with national security; or second, under s.24(1), that exemption is required for the purpose of safeguarding national security under s.24(1). In a Decision Notice dated 23 August 2021 the Commissioner not only agreed that *one* of those two exemptions applies to the requested information, but also that the Home Office was entitled to withhold which exemption actually *does*. This is the appeal against that Decision Notice. We should also record the Home Office's previous reliance upon the exemption at s.36(2)(c), prejudice to the effective conduct of public affairs, and s.40, concerning disclosure of an individual's personal data; these are no longer relied upon and we need say no more about them.

## **The appeal**

### The adjourned hearing

7. Notice that the appeal would be heard on 2 December 2022 was sent to the parties on 9 August 2023. On the morning of that hearing, an application was made on behalf of the Home Office for an adjournment. A CLOSED witness statement had been made by Michael Dunbar, an official in the Home Office's Special Cases Unit, giving evidence in support of its case. It would not be shown to anyone apart from the two respondents, and cross-examination of Mr Dunbar upon its contents would be done in closed session in the absence of the appellant and its representative. The application was made on the basis that part of that statement was inaccurate, and that the inaccuracy could not be resolved without the hearing being adjourned.
8. The following can be said in these reasons concerning the error, how it came about, and why it was only noticed on the eve of the hearing. There are two teams in the Home Office that draft and submit potential deprivation cases to the Secretary of State. The first is the Special Cases Unit, of which Mr Dunbar is a member, and the second is the Status Review Unit. The request for information and the present proceedings has never distinguished between deprivations from one or the other. At the time of signing his original closed witness statement dated 1 April 2022 Mr Dunbar neglected to verify the details with the Status Review Unit. This led to a significant inaccuracy in his evidence. This was only noticed by Mr Dunbar very shortly prior to the hearing, when it was too late to remedy it.
9. Full details of the inaccuracy, its materiality and the reason it came about could only be explained in CLOSED session. We are grateful to Mr Knight, on behalf of the Commissioner, for his keen scrutiny of the Home Office's application in that part of the hearing. Ms Kerr Morrison, then representing RSI, objected to the application for an adjournment on the basis that she could not fairly respond without knowing its basis. We accepted that the full details ought to be withheld, and that the hearing should be adjourned.
10. Mr Dunbar has apologised for his error, and we acknowledge the pressures under which it arose. Such pressures can lead to mistakes, and this is usually indicative that systems to guard against them either do not exist or have failed. We therefore also welcome the Home Office's apology and subsequent confirmation that a full 'lessons learned' review was undertaken. Sensibly, it was confirmed at the adjourned hearing that any application for costs under rule 10(1)(b), which permits the Tribunal to order costs where a party has conducted the proceedings unreasonably, would not be resisted.
11. The Tribunal subsequently ordered the Home Office to pay RSI and the Commissioner's costs of the adjournment, in the agreed sums of £14,400 and £1,800 respectively.

12. While the matter is therefore considered to be resolved, we nonetheless emphasise the extent to which operation of FOIA – and the rule of law in general – depends on the accuracy of evidence given by government officials, especially when given in a witness statement verified by a statement of truth. This dependency is all the more acute in a closed material procedure where, notwithstanding the Tribunal and the Commissioner’s efforts to ensure a fair hearing, as set out in Browning v Information Commissioner [2014] EWCA Civ 1050, there is inevitably a potential for lesser scrutiny of evidence than would otherwise be the case.

### The effective hearing

13. At the effective hearing, the Tribunal heard oral evidence from Sarah St Vincent, the Executive Director of RSI, Katie Powell-Davies, the Head of Deprivation at the Home Office’s Special Cases Unit, and Michael Dunbar, who also works in the Special Cases Unit. We shall set out the pertinent parts of their evidence when dealing with the substantive issues.
14. The Tribunal then moved into CLOSED session, excluding everyone save those attending on behalf of the Commissioner and the Home Office.
15. The Tribunal had previously made rule 14(6) directions allowing the Home Office to rely on evidence that would not be disclosed to anyone apart from the two respondents and their legal advisers. The Tribunal made those directions because it was satisfied that that to do otherwise would risk revealing the withheld information, thereby defeating the purpose of the appeal, and would further risk engaging the prejudice described in s.24(1) (without prejudice, of course, to the Tribunal’s eventual decision on whether that exemption applies). The CLOSED material comprised the withheld information, confidential representations made to the Commissioner during his investigation, and witness statements from Katie Powell-Davies, dated 2 February 2023, and from Michael Dunbar dated 1 April 2022 and 3 February 2023.
16. To assist the Tribunal in achieving a fair procedure, and in accordance with the guidance given in Browning at [35], the Tribunal sought and received confirmation from RSI which questions it would wish to be put to the witnesses in their CLOSED evidence. During the CLOSED hearing the Tribunal sought to ensure that it fulfilled its own inquisitorial and independent function, and Mr Knight likewise asked questions and made submissions on behalf of the Commissioner. Following the CLOSED session, Mr Knight and Mr Deakin prepared a narrative setting out as much as possible of what had transpired so that Ms Littlewood could make submissions accordingly. Again, we shall set that out in these reasons when necessary to explain our reasoning on the substantive issues, together with the closing submissions made by the parties once the Tribunal resumed in OPEN session.

### **Legal framework and issues**

17. As confirmed in Information Commissioner v Malnick [2018] UKUT 72 (AAC), on an appeal under s.58 of FOIA the Tribunal may review any finding of fact on which the notice in question was based. This means that the Tribunal exercises a full merits appellate jurisdiction, making any necessary findings of fact and then deciding for itself whether the provisions of FOIA have been correctly applied. But the Tribunal does not start with a blank sheet: the starting point is the Commissioner’s decision, to which the Tribunal should give such weight as it thinks fit in the particular circumstances. The proceedings are inquisitorial,

save that the Tribunal is entitled to respect the way in which the issues have been framed by the parties.

### The claimed exemptions

18. Section 23 provides that any 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).
19. In Commissioner of the Police of the Metropolis v Information Commissioner & Rosenbaum (Information rights - Freedom of information - qualified exemptions) [2021] UKUT 5 (AAC), at [35], the Upper Tribunal set out fourteen principles arising from the Act and previous authority. We set them out in full (details of the authorities cited can be found earlier in the Upper Tribunal's decision):
  1. *Section 23 affords the "widest protection" of any of the exemptions: Cobain at [19(b)] and [29].*
  2. *The purpose of section 23 is to preserve the operational secrecy necessary for section 23(3) bodies to function: Lownie at [50].*
  3. *It is "Parliament's clear intention that, because of what they do, there should be no question of using FOIA to obtain information from or about the activities of section 23 bodies at all". The exclusion of the section 23(3) bodies from the scope of FOIA was shutting the front door, and section 23 was "a means of shutting the back door to ensure that this exclusion was not circumvented": APPGER at [16].*
  4. *The legislative choice of Parliament was that "the exclusionary principle was so fundamental when considering information touching the specified bodies, that even perfectly harmless disclosure would only be made on the initiative or with the consent of the body concerned": Cobain at [28]; Lownie at [53].*
  5. *Asking whether the information requested is anodyne or revelatory fails to respect the difficulty of identifying what the revelatory nature of the information might be without a detailed understanding of the security context: Lownie at [42]; Corderoy at [59].*
  6. *When applying the 'relates to' limb of sections 23(1) and (5) , that language is used in "a wide sense": APPGER at [25]; Corderoy at [59] ; Savic at [40].*
  7. *The first port of call should always be the statutory language without any judicial gloss: APPGER at [23]; Corderoy at [51]; Savic at [40].*
  8. *With that warning in mind, in the context of 'relates to' in section 23 , it may sometimes be helpful to consider the synonyms of "some connection", or "that it touches or stands in some relation to" (APPGER at [13], [25]) or to consider whether the request is for "information, in a record supplied to one or more of the section 23 bodies, which was for the purpose of the discharge of their statutory functions" (APPGER at [21], [26]; Lownie at [57]). But the 'relates to' limb must not be read as subject to a test of focus (APPGER at [14] or directness (Lownie at [59]- [60]).*

9. *The scope of the ‘relates to’ limb is not unlimited and there will come a point when any connection between the information and the section 23(3) body is too remote. Assessing this is a question of judgment on the evidence: Lownie at [62].*
  10. *The assessment of the degree of relationship may be informed by the context of the information: Lownie at [4] and [67].*
  11. *The scope of the section 23 exemption is not to be construed or applied by reference to other exemptions, including section 24 : APPGER at [17]; Lownie at [45] and [52].*
  12. *In a section 23(1) case, regard should be had as to whether or not information can be disaggregated from the exempt information so as to render it non-exempt and still be provided in an intelligible form: Corderoy at [43].*
  13. *Section 23(5) requires consideration of whether answering ‘yes’ or ‘no’ to whether the information requested is held engages any of the limbs of section 23 : Savic at [43], [82] and [92].*
  14. *The purpose of section 23(5) is a protective concept, to stop inferences being drawn on the existence or types of information and enables an equivalent position to be taken on other occasions: Savic at [60].*
20. It is an absolute exemption. Information to which it applies is exempt from the duty of disclosure whether or not any possible prejudice could arise from its disclosure. In enacting the exemption, Parliament intended to exclude all the listed security bodies and their activities from the duty at section 1 of the Act.
  21. Section 24(1) provides that information which does not fall within s.23(1) is exempt information if exemption is reasonably required for the purpose of safeguarding national security.
  22. In approaching the exemption at s.24(1), the Upper Tribunal in Foreign, Commonwealth and Development Office v Information Commissioner, Williams and Others (Sections 23 and 24) (Information rights - Freedom of information - absolute exemptions, Information rights) [2021] UKUT 248 approved six principles. We summarise them as follows:
    - (1) The term national security has been interpreted broadly and encompasses the security of the United Kingdom and its people, the protection of democracy and the legal and constitutional systems of the state.
    - (2) A threat to national security may be direct (the threat of action against the United Kingdom) or indirect.
    - (3) Section 24 is not engaged, unlike the majority of the qualified exemptions, by a consideration of prejudice. Its engagement is deliberately differently worded.
    - (4) The term “required” means “reasonably necessary”.
    - (5) National security is a matter of vital national importance in which the Tribunal should pause and reflect very carefully before overriding the sincerely held views of relevant public authorities.

- (6) Even where the chance of a particular harm occurring is relatively low, the seriousness of the consequences (the nature of the risk) can nonetheless mean that the public interest in avoiding that risk is very strong. The reality is that the public interest in maintaining the qualified national security exemption in section 24(1) is likely to be substantial and to require a compelling competing public interest to equal or outweigh it. That does not mean that the section 24 exemption carries “inherent weight”, but is rather a reflection of what is likely to be a fair recognition of the public interests involved in the particular circumstances of a case in which section 24 is properly engaged.

Future references to Williams are to that authority unless otherwise specified as there is more than one case in this field bearing that name.

23. As recognised by the final point, the exemption will only apply if the public interest in withholding the information outweighs the public interest in its disclosure.

#### Masking the exemption relied upon

24. The Home Office claims these exemptions in the alternative. As section 24(1) cannot apply to information that falls within 23(1), confirmation by a public authority, the Commissioner or the Tribunal as to which exemption applies risks revealing whether or not the information was supplied by, or relates to, one of the bodies at section 23(3). In Williams the Upper Tribunal held that the Act does permit a public authority, in order to protect national security, to ‘mask’ the actual exemption that applies by reliance upon the two sections in the alternative. While this practice may well put the requester at a disadvantage, the remedy lies with the Commissioner (and, on appeal, the Tribunal) taking steps to be satisfied that one of the exemptions has been properly claimed.
25. We canvassed with the representatives whether concealment of the actual exemption that applies (if either) can be invoked by the public authority as of right, the Tribunal being bound to give its reasons accordingly, or whether the Tribunal must be satisfied that masking remains is in the public interest when set against the importance of open justice. All three counsel submitted, and we agree, that the latter proposition is the correct one. The Tribunal must be independently satisfied in a particular case that the public interest justifies masking which exemption applies.
26. Mr Deakin did qualify his position on the above principle by reference to what we consider to be two important arguments. First, he drew attention to the caution expressed in Williams at [52(5)], being that the Tribunal should pause and reflect very carefully before overriding the sincerely held views of relevant public authorities. We agree that the principles applying to the substantive consideration of section 23(1) and section 24(1), as set out in Rosenbaum and Williams, also apply when considering whether masking is justified. He next observed that if the Tribunal applies too high a threshold when deciding whether the public interest justifies masking, then this may be revelatory in itself - a decision that the true exemption should be masked may, if sufficiently rare across a large number of cases, enable someone to infer that use of masking does disclose the involvement of a section 23(3) body. We agree with this observation, which raises similar considerations to those cited and approved in Williams at [67] in relation to ‘neither confirm nor deny’ responses.

## Issues

27. The following issues therefore arise for decision:

- a. What is the Tribunal's assessment of the parties' cases on the potential engagement of section 23?
- b. On the hypothetical basis that a balancing exercise is necessary to determine the exemption under section 24, what are the relevant factors in determining whether the public interest in withholding the information outweighs the public interest in its disclosure?
- c. Is the requested information exempt under either section 23 or 24?
- d. If so, is the Home Office, and by extension the Commissioner and the Tribunal, entitled to mask which of them actually does?

### **Section 23 – “supplied by, or relates to”**

28. The parties agree that the applicable law is contained within the fourteen Rosenbaum principles, already set out above.
29. RSI argues that in many individual cases the requested information, being gender and the number and age of children, is unlikely to have been supplied by a section 23(3) body, more plausibly having been derived from immigration, registry office and passport records. For the information to be exempt under section 23 it must therefore ‘relate to’ a section 23(3) body. In that respect, RSI points in particular to the eighth and ninth principles, asking the Tribunal to recognise that the scope of the ‘relates to’ limb is not unlimited and there will come a point when any connection between the information and the section 23(3) body is too remote. This is the case, argues RSI, with the anonymous aggregated information requested. Even if a deprivation decision was taken in reliance upon information provided by a section 23(3) body, then this does not mean all surrounding information must then relate to that body.
30. The remainder of the evidence and submissions on this subject can only be set out in our CLOSED reasons.

### **Section 24 – public interest balancing test**

31. We next set out our assessment of the parties' cases on the public interest balancing test required by section 24, insofar as is possible in these open reasons and on the alternative basis that the material is not exempt under section 23. We have done so purely by reference to the parties' arguments and evidence, and have taken no account of the actual content of the requested information. Insofar as some pieces of evidence post-date the Home Office's response to the request for information, contrary to the requirement that public interest factors be assessed as they were on that date, the parties agree that their inclusion does not materially alter the final outcome. We therefore decline to embark on an exercise to determine exactly what does, and does not, fall to be considered.



The public interest in disclosure

32. RSI first puts forward the draconian nature of the power to deprive a person of their British citizenship, by reference to the way in which the topic was described in Shamima Begum (Deprivation : Substantive) [2023] UKSIAC 1 163 2019

*2. It is an appeal about fundamental principles, rights and obligations. These are matters of the highest importance. British citizenship is a fundamental entitlement and carries with it rights and privileges of huge importance to the individual, in particular the right of abode in this country. The rule of law is equally important, placing at the heart of our constitutional settlement ever since Magna Carta, the right of the subject not to be outlawed or exiled "except by the lawful judgment of [her] peers and the law of the land" (clause 39). Last but not least in this catalogue comes the duty of Government, acting for these purposes through the Secretary of State, to uphold and safeguard the national security of the United Kingdom.*

33. We agree, and further take into account that citizenship was described as a status “fundamental at common law” and its loss as “a radical step” in Pham v Secretary of State for the Home Department [2015] UKSC 19.

34. Proper scrutiny of the use of the power is plainly in the public interest. Not only may a deprivation decision have a profound effect upon an individual, but the public can be legitimately concerned that its use to uphold national security is both effective and proportionate.

35. In its response to the request for information, the Home Office accepted that:

*There is a general public interest in openness and transparency in government, which will serve to increase public trust. There is a public interest in members of the public being able to understand the breakdown of those deprived of their citizenship.*

36. At the hearing, the Home Office accepted RSI’s argument that there is a public interest in disclosure of the requested information “so that the public, Parliament and organisations such as RSI can assess the extent to which women and children are impacted by the government’s policies on nationality deprivation.” Of course, RSI’s case is put in somewhat stronger terms than the public interest simply existing. We must decide *how much* weight is carried by the public interest in disclosure, so that it can be balanced against the countervailing considerations of national security

37. Mr Deakin, on behalf of the Home Office, made clear that not all the facts and opinion put forward by RSI are accepted. Nonetheless, it was considered unnecessary and disproportionate to engage in a forensic examination of the various pieces of evidence provided. We endorse that approach.

38. RSI’s specific concern is with the use of the power in relation to (and its effect upon) women and children. Ms Ramsden’s evidence refers to two reports produced by RSI: *Abandoned to torture: dehumanising rights violations in northeast Syria*, October 2021<sup>ii</sup>, and *Europe’s Guantanamo: the indefinite detention of European women and children in northeast Syria*, November 2020<sup>iii</sup>. We have considered those reports. Her witness statement continues:

21. ... *These reports document, and analyse under international human rights law, the dire humanitarian conditions in which women and children are being held in the camps. We note in the Executive Summary of Abandoned to Torture that children and women in the camps ‘are being held at a constant risk of violence, exploitation, fire, disease, and the forced separation of children from their mothers’. Based on our research and other reporting, we also note in the Executive Summary our understanding that:*

*Hunger, thirst, poor sanitation and inadequate shelter are pervasive problems in the camps, jeopardising the lives of both children and adults. Plastic tents collapse, flood, become contaminated with sewage, and catch fire: [reports from Save the Children] indicate that 13 children in al Hol camp died between January and September 2021 as a result of fire-related injury. Malnutrition, dehydration and diarrhoea have been linked to illnesses and deaths in the camps ... Covid-19 has posed an increasing threat in the camp.*

22. *Abandoned to Torture finds that the severity of the pain and suffering of children and women in the two camps, due to the prevailing conditions in the camps, rises to at least the level of inhuman and degrading treatment, and probably torture, a finding which has been supported by UN experts. I exhibit one example, dated 10 February 2022, of several press statements from UN experts making this point at Exhibit ER4. To the best of RSI’s knowledge, children and women in the camps remain exposed to pain and suffering as a result of these dire humanitarian conditions in the camps, hence the continuing urgent need for the information requested by parts (c)-(e) of the Request to be disclosed to inform public scrutiny of the government’s response to these children and women.*

39. RSI gives several examples of women living in camps who have been deprived of their citizenship. Some are the subject of published decision and reports, such as D4, whose circumstances are described by the Court of Appeal in R. (D4) v Secretary of State for the Home Department [2022] EWCA Civ 33, and C11, as confirmed in a decision of the Special Immigration Appeals Commission under reference SC/175/2020 on 14 April 2021.
40. RSI’s research goes beyond legal decisions, and is underpinned by an impressive range of government and other sources, including from camp authorities and humanitarian organisations working in them. This includes that throughout all its research RSI has yet to come across a single example of a British woman in the camps who was not deprived of her nationality.
41. As well as the consequences of being forced to remain in the camps, RSI highlights the effect of deprivation (and the related decision to exclude from the United Kingdom) on family relationships. A report by the charity Reprieve from 2021 states that ‘in an apparently coordinated series of letters to Reprieve and their legal representatives, the FCDO has presented at least five British families in Syria with a devastating ultimatum, offering only to consider the repatriation of their children if the mothers consent to being abandoned in the region and separated from their children indefinitely.’
42. Finally, RSI puts forward its “real concern that the Home Secretary has stripped British citizenship from girls and women who have been trafficked for sexual exploitation, including while they were still children.” As well as the evidence adduced by RSI, it is right

to observe that some support for this proposition can be found in SIAC's substantive decision in Begum. The Commission found there to be a "credible suspicion that Ms Begum was recruited, transferred and then harboured for the purpose of sexual exploitation" when she was a child. It referred to the Secretary of State's own statements recognising "that female recruits, including children, are destined to be 'married off' to act as brides for ISIL fighters and to provide the next generation".

43. On behalf of the Home Office, Mr Deakin argued that disclosure of the requested information would provide limited support in promoting scrutiny of deprivation. The headline figure had already been disclosed, and was sufficiently low to mean that the numbers requested were unlikely to bear any statistical significance. The Home Office's rule 23 Response likewise argues that the already-disclosed total number of decisions made is "the most centrally relevant information" and that disclosing the requested information would be "of limited utility". We reject these arguments. As astutely observed by Mr Knight in his closing submissions, the sixth principle in Williams can cut both ways. Even where the chance of disclosure making a significant contribution to transparency is relatively low, the seriousness of the underlying issues can nonetheless mean that the public interest in disclosure is very strong. We would add that respect for institutional competence and expertise also cuts both ways. RSI plainly has competence and expertise in the usefulness of data such as requested in this appeal, and no good reason is put forward that justifies overriding its sincerely held views.

#### *Conclusion on the public interest in disclosure*

44. It is not our function in this appeal to reach any conclusion on the rights and wrongs of deprivation of citizenship, either in principle or by reference to individual cases. The law places responsibility for deciding when to exercise the power in the hands of the Secretary of State. We must nonetheless decide the degree of public interest in scrutiny of that decision-making process. As already made clear above, nothing in these OPEN reasons should be taken as reflecting the actual content of the requested information. We are also conscious that the Home Office does not accept all of RSI's concerns recorded above. Nor should we be taken as having made definite findings on whether they are all established. Yet the differences between the parties on those concerns illustrates the importance that public scrutiny is informed by evidence and transparent decision-making.
45. We accept RSI's case that the public interest in disclosure is very high indeed. It is difficult to think of many actions the state can take against one of its citizens that can have such severe consequences. The evidence rehearsed above also establishes, at the very least, the potential for those consequences to be graver still for women and girls, their children, and in particular for victims of trafficking and sexual exploitation. Information requests such as the one under consideration are capable of making an important contribution to public understanding of how the power is used.

#### Is exemption required for the purposes of national security?

46. RSI argues that the requested information in relation to individuals is routinely disclosed in published SIAC decisions. Ms Littlewood's skeleton argument cites 10 such decisions, including that of Shamima Begum, many of which disclose the appellant's gender and the age of any children they may have. Given that such details would not be included in open decisions if to do was contrary to national security, RSI cannot see how the requested information could possibly raise national security concerns sufficient to outweigh the

requested information. RSI also refers to some aggregate information having been disclosed for previous years, for example in a letter from James Brokenshire MP, then the Minister for Immigration & Security, to the Parliamentary Joint Committee on Human Rights.

47. RSI also argues that no open evidence or submissions have been made as to how disclosure of the requested information could adversely affect national security in any event. Ms Littlewood poses hypothetical examples of what the information may contain to ask, rhetorically, what possible harm could arise from knowing that (say) 15 of 20 people deprived of citizenship in 2020 were women and that this affected 30 children. This is anonymised aggregate data.
48. The Home Office, supported by the Commissioner, argues that the potential link between the requested information and national security is obvious. The Transparency Report lists the nature of the circumstances that can lead to the making of a deprivation order: national security, including espionage and acts of terrorism directed at this country or an allied power; unacceptable behaviour such as ‘glorification’ of terrorism; war crimes; and serious and organised crime. This is described by the Commissioner as showing a plain link to the requirement to safeguard national security even if no section 23(3) body is involved.
49. RSI criticises that position as missing the requirement that there be a causal relationship between exempting the requested material and safeguarding national security. A decision having been taken on national security grounds does not necessarily mean that all information related to it must engage section 24. We agree with this submission; Williams makes clear that there must be an identifiable risk to national security arising from disclosure before the exemption can apply. In fairness to the Commissioner however, we take his point as simply being that the existence of such harm is conceivable given the subject area. While this is correct in a broad sense, it must also be acknowledged that some deprivation cases will be entirely unconnected to national security - Ms Littlewood cited several examples, including Ahmed (Deprivation of Citizenship) (Pakistan) [2017] UKUT 118, and this was accepted by Ms Powell-Davies.

### **Does either exemption apply?**

50. Yes. We cannot set out more detail in these reasons than that. We nonetheless assure RSI of our full and independent scrutiny of the evidence and arguments heard in CLOSED session. The searching questions submitted by RSI were asked on its behalf, insofar as they relevantly arose and were not already addressed in the CLOSED witness statements. The Tribunal was also greatly assisted by Mr Knight, who asked additional questions to test the case put forward by the Home Office. The panel likewise asked questions. Further detail was given by Ms Powell-Davies as to the decision-making process applicable to deprivation orders and the sources of information that may be drawn upon and are available to the Home Office. All the points raised by RSI, including those set out above, have been carefully considered when making our decision.

### **Masking which exemption applies**

51. The representatives were not agreed on whether Williams provides any discrete test for determining when masking can take place. Ms Littlewood argued that it is only permissible where to do otherwise would, in an individual case, reveal the involvement of a section 23(3) body. Citing Williams at [8], Mr Deakin put forward a ‘relates to’ test, arguing that it

was sufficient for the requested information to relate to the subject matter of either exemption.

52. We prefer the submissions of Mr Knight. The reasoning of the Upper Tribunal is at [55], where it found that “the specification of sections 23 and 24 in the alternative must be permitted to avoid adverse consequences of a significant nature.” This can then be seen to support the outcome at [58], and it would be wrong to take that paragraph as setting out a ‘relates to’ test. Nor was revelation the test, as can be seen at [36] it was just one of the issues put forward by the public authority as justifying masking. Mr Knight argued, and we accept, that there must be a fact and context-specific assessment in each case by reference to the language and purpose of the Act as explained by the Upper Tribunal at [49]-[54] . While (as Mr Knight put it) this does not provide a single formula that can be incanted in every case, it nonetheless requires discipline on the part of public authorities by requiring them to justify masking decisions.
53. That approach is supported by the discussions at the hearing as to when masking might or might not be justified in the public interest. Mr Deakin put forward the hypothetical example of a request to the Security Service asking for its correspondence on a particular subject with the Central Intelligence Agency. The requested information would so plainly engage section 23(1) as to make it difficult to see how masking it could be justified. We agree, and further consider that it might not be necessary for the request to have been made directly to a section 23(3) body; for example, on the facts of Williams v Information Commissioner [2023] UKFTT 1079 (GRC), as recorded at [14]-[16], it is difficult to see how an argument for masking the application of s.23 could have succeeded. There are also contexts in which the need for masking will be plainly established. Ms Littlewood put forward RSI’s agreement with one such example, given in Williams at [26], seeking to contrast it with the present appeal. In practice, of course, not all cases will fall so neatly at one end of the spectrum.
54. Applying that fact and context-specific assessment, we have decided that it is appropriate in the present appeal to mask which exemption applies. None of our reasoning can be publicly disclosed. As with our conclusion that one of exemptions does apply, we assure RSI that we have taken the utmost pains to ensure that its arguments have been fully taken into account.
55. As explained at paragraph 1, the appeal must therefore be dismissed.

Signed

Date:

*Judge Neville*

15 April 2024

<sup>i</sup> <https://www.gov.uk/government/publications/disruptive-powers-2020>

<sup>ii</sup> [https://www.rightsandsecurity.org/assets/downloads/Abandoned\\_to\\_Torture\\_-\\_Final\\_Report.pdf](https://www.rightsandsecurity.org/assets/downloads/Abandoned_to_Torture_-_Final_Report.pdf)

<sup>iii</sup> [https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE\\_REPORT.pdf](https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf)