

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 26 March 2013

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

Decision (including any steps ordered)

1. The complainant requested details of funding provided by the Home Office to ACPO (the Association of Chief Police Officers). After protracted correspondence, the Home Office provided some information and withheld the remainder under sections 24(1), 31(1)(a), 38(1)(b), 40(2) and 43(2) of the FOIA. The Commissioner finds that the Home Office was entitled to withhold some of the requested information but that some of the information ought to have been disclosed to the complainant at the time of his request.
2. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Disclose the information specified in the attached confidential schedule.
3. The public authority must take these steps within 35 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. The complainant submitted his original request to the Home Office on 30 November 2010. The complainant requested the following information:

"Please supply a list of all funding given to ACPO for the financial year 2009/10. A similar table to <http://www.publications.parliament.uk/pa> would be a sufficient level of detail for this element of the request.

In relation to each item of funding, please supply a copy of any contracts or other agreements or documents detailing precisely what the funding is for. If retrieving all of this information would breach the cost limit, then please do this for as many of the items of funding as you can within the limit, starting with the highest amount, then the next highest and so on."

5. The Home Office refused this request as vexatious under section 14 of the FOIA. The Commissioner issued a decision notice on 30 September 2011¹ finding that the request was not vexatious.
6. Following the Commissioner's decision the Home Office provided a fresh response to the complainant's request on 24 October 2011. The Home Office answered the first part of the request by providing a list of 16 funding streams and the amount allocated to each item. The Home Office cited section 12 of the FOIA in relation to the second part of the request as it stated that compliance would exceed the cost limit.
7. The complainant requested an internal review of the Home Office's response to the second part of the request on the same day. On 18 November 2011 the Home Office advised the complainant that it had completed the internal review and upheld its response of 24 October 2011.
8. The complainant contacted the Commissioner on 2 January 2012 to complain about the way the second part of his request for information had been handled.
9. On 29 March 2012 the Home Office informed the Commissioner that it no longer wished to rely on section 12, as it had concluded that the cost limit was unlikely to apply to the whole of the second part of the request. The Home Office advised that it required further time to provide a more accurate response to the complainant, and some or all of the information was likely to be exempt.
10. On 8 May 2012 the complainant argued to the Commissioner that the Home Office had failed to comply with decision notice FS50380320 as it had failed to provide the withheld information or issue a valid refusal notice. However the Commissioner considers that the Home Office had

¹ Decision notice FS50380320

in fact complied with the decision notice by issuing the refusal notice of 24 October 2011.

11. On 15 May 2012 the Home Office issued a fresh refusal notice to the complainant. The Home Office advised that it had searched up to the cost limit, and had collated information relating to the 3 highest funding schemes. However the Home office advised that the collated information was exempt under sections 24(1), 31(1)(a) and 38(1)(b) of the FOIA. The Home Office advised that it required further time to consider the public interest in relation to these exemptions. On 28 May 2012 the Home Office advised the complainant of its conclusion that the public interest favoured maintaining the exemptions cited.
12. On 11 June 2012 the complainant requested an internal review of the Home Office's latest response. The complainant questioned whether additional information could have been collated within the 24 hours allowed under the cost limit. The complainant also challenged the application of exemptions and the public interest test.
13. The Home Office informed the complainant of the outcome of the internal review on 14 September 2012. At this stage the Home Office agreed that further information should have been collated under the cost limit. In addition to the 3 funding streams already collated the Home Office had now collated information relating to a further 6 funding streams, making a total of 9 collated funding streams. The Home Office disclosed some information in relation to the collated funding streams, but withheld the remainder under sections 24(1), 31(1)(a), 38(1)(b), 40(2) and 43(2). The Home Office confirmed that collation of the remaining 7 funding streams would exceed the cost limit.

Scope of the case

14. On 17 September 2012 the complainant advised the Commissioner that he remained dissatisfied, and asked the Commissioner to make a decision in relation to the withheld information.
15. The complainant had no issue with the information provided on 24 October 2011 in relation to the first part of the request. Nor did the complainant dispute the Home Office's position that only 9 of the 16 funding streams could be collated within the cost limit. The complainant accepted that the Home Office was entitled to rely on section 43(2) where it had been claimed.
16. The complainant further accepted that the Home Office may have been entitled to withhold some of the names contained within the information, but argued that in any event the job titles ought to have been disclosed.

17. In addition the complainant disputed the redaction of security classifications from the information provided. During the course of the Commissioner's investigation the Home Office accepted that the security classifications of the information provided were not exempt and ought to have been provided to the complainant.
18. Therefore the Commissioner's decision in this case relates only to the withheld information contained in the following funding streams:

Funding stream	Exemptions applied
Counter Terrorism Grant (Office of Security and Counter Terrorism, OSCT)	24(1), 31(1)(a), 38(1)(b)
Prevent Policing (OSCT)	24(1), 31(1)(a), 38(1)(b)
Prevent Grants (OSCT objective 1, 2, 3)	24(1), 31(1)(a), 38(1)(b)
Prevent Channel (OSCT)	24(1), 31(1)(a), 38(1)(b)
OSCT Education (Police in Schools)	24(1), 31(1)(a), 38(1)(b)
Organised Crime (UK Borders Agency, UKBA)	40(2)
VCU (Violent Crime Unit) (payment for seconded officers)	40(2)
Olympic Safety (OSCT)	40(2)

Reasons for decision

Section 24(1): national security

19. Section 24(1) of the FOIA states that

"(1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."

20. Although the term 'required' is not defined within the FOIA, the Commissioner interprets it in the context of section 24 to mean 'reasonably necessary'. In effect this means that there has to be a risk of harm to national security for the exemption to be relied upon but there is no need for a public authority to prove that there is specific, direct or imminent threat.
21. The Home Office claimed that information relating to the following funding streams was exempt under section 24(1) of the FOIA:
 - Counter Terrorism Grant (Office of Security and Counter Terrorism, OSCT)
 - Prevent Policing (OSCT)
 - Prevent Grants (OSCT objective 1, 2, 3)
 - Prevent Channel (OSCT)
 - OSCT Education (Police in Schools)
22. In its refusal notice dated 28 May 2012 the Home Office did not provide any specific arguments as to how the exemption at section 24(1) was engaged, although its public interest arguments contained general information about the application of the exemption. The internal review letter dated 14 September 2012 did not provide any further explanation on this issue. The Commissioner has commented on this further at paragraph 78 below.
23. The Home Office provided the Commissioner with additional arguments to support its application of the exemption at section 24(1). The Home Office argued that disclosure would reveal sensitive and valuable information about the UK's capabilities and scope of interest in regards to counter terrorism work.
24. In particular the Home Office argued that the disclosure of information identifying the geographical distribution, details of counter terrorism specific grants, or the recipients of individual funding streams, could be used by those involved in terrorist organisations to undermine the operational integrity of these activities. This would have an adverse impact on safeguarding national security; therefore exemption from disclosure was required.
25. The Commissioner understands that, at the time of issuing this decision notice, the threat level from international terrorism was substantial², meaning that a terrorist attack is considered a strong possibility. The Commissioner accepts the arguments put forward by the Home Office

² <http://www.homeoffice.gov.uk/counter-terrorism/current-threat-level/>

with regard to the more detailed information as set out above. Therefore the Commissioner finds that the exemption at section 24(1) is engaged in relation to the descriptions of the activities covered by each agreement and the amounts of money to be spent on them.

26. However the Commissioner notes that some of the withheld information comprises generic information relating to the administration of the grants, rather than operational information relating to planned activities. The Commissioner further notes that similar administrative information has already been disclosed to the complainant in the grant agreements relating to the Olympic Safety and DVI work streams. The Commissioner can see no reason why an exemption from disclosure of this information is required to safeguard national security. Therefore the Commissioner finds that the exemption is not engaged in relation to this generic information.
27. Section 24 is a qualified exemption and therefore subject to the public interest test. In relation to the information which the Commissioner finds is exempt under section 24(1), he has gone on to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in favour of disclosing the information

28. The Home Office acknowledged that transparency in relation to counter terrorism funding by the government is likely to assist public understanding of how the government is working in these areas. This would allow informed public scrutiny with regard to this subject area and the spending of public funds.
29. The Home Office further accepted that disclosure could assure the public that it is ensuring that adequate and appropriate resources are allocated.
30. The complainant also made arguments in favour of disclosing the requested information. The complainant advised that that some information relating to the Prevent funding stream was available in the public domain, which he considered weakened the arguments in favour of withholding the information.
31. In addition the complainant referred to allegations in the national media that funding might have been misused by ACPO. The complainant was of the view that these allegations added weight to the public interest in disclosing relevant information.

Public interest in favour of maintaining the exemption

32. The Home Office argued that there is a very strong public interest in safeguarding national security, which can only be overridden in exceptional circumstances. The Home Office advised that it was unable to identify such circumstances in this case.
33. The Home Office was of the clear view that it would not be in the public interest to disclose information which it had already indicated would reveal sensitive and valuable information about the UK's capabilities and scope of interest with regard to counter terrorism work. The Home Office had argued that exemption was required to avoid undermining this work, and there was a strong public interest in ensuring that such prejudice did not occur through disclosure.
34. The Home Office also argued that, as it had already disclosed the more generic information in relation to other funding streams, there was little public interest in disclosing this type of information in relation to the remaining work streams. However the Commissioner has already found that this information is not exempt under section 24(1), therefore this particular public interest argument does not apply in relation to the information which the Commissioner has accepted is exempt.

Balance of the public interest

35. The Commissioner notes the legitimate public interest in the public being informed about how the Home Office allocates funding and what it is used for. Disclosure in this case would assist the public's understanding of how the Home Office funds projects and work undertaken through ACPO.
36. However, the Commissioner considers that there is substantial public interest in ensuring that the UK's national security is not compromised by the disclosure of information under the FOIA. The Home Office has explained how disclosure of detailed information could be used to harm national security in this case.
37. The Commissioner has considered the complainant's arguments as well as those put forward by the Home Office. With regard to the information exempt under section 24(1), the Commissioner is of the view that the argument that there is information already in the public domain about some of the activities does not carry significant weight.
38. The Commissioner understands the complainant's assertions in relation to media discussion about ACPO funding. However, this does not equate to information being published by a public authority as it is essentially unverified. The Commissioner does not consider that such speculation

and unsubstantiated allegations of misuse adds any significant weight to the arguments in favour of disclosure.

39. In light of the inherently strong public interest in protecting national security, and the absence of exceptional circumstances, the Commissioner, having had sight of the withheld information, has concluded that the public interest in maintaining the exemption clearly outweighs the public interest in disclosing the information exempt under section 24(1).

Section 31(1)(a) – law enforcement

40. Section 31(1)(a) of the FOIA provides an exemption where disclosure would be likely to prejudice the prevention or detection of crime. For the exemption to be engaged it must be at least likely that the prejudice identified would occur. Even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
41. The Home Office argued that, similarly to section 24(1), disclosure would reveal sensitive and valuable information about the UK's capabilities and scope of interest in regards to law enforcement work. The Home Office considered that the disclosure of this information would assist individuals and/or groups seeking to plan or carry out an attack by providing detailed knowledge. In addition the Home Office argued disclosure could assist criminals or potential terrorists by providing them with information that would allow them to be aware of the resources and methods at the disposal of the police.
42. As the Commissioner has found that some information was correctly withheld under section 24(1), he is not required to make a decision in relation to the application of section 31(1)(a) to this information. As explained at paragraph 26 above the remaining information is generic and administrative in nature, and similarly the Commissioner does not see any reason why disclosure of this generic information would be likely to prejudice the prevention or detection of crime in any way. Therefore the Commissioner finds that the exemption at section 31(1)(a) is not engaged in relation to the generic information, and he is not required to consider the public interest test.

Section 38(1)(b) – health and safety

43. Section 38(1)(b) of the FOIA provides an exemption where disclosure would be likely to endanger the physical or mental health or safety of any individual.
44. As with section 31(1)(a), the Commissioner has found that some information was correctly withheld under section 24(1), therefore he is

not required to make a decision in relation to the application of section 38(1)(b) to this information. As explained at paragraph 26 above the remaining information is generic and administrative in nature, and similarly the Commissioner does not see any reason why disclosure of this generic information would be likely to endanger the health or safety of any individual. Therefore the Commissioner finds that the exemption at section 38(1)(b) is not engaged in relation to the generic information, and he is not required to consider the public interest test.

Section 40(2) – personal data

45. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information if to do so would:

- constitute a disclosure of personal data, and
- this disclosure would breach any of the data protection principles³ or section 10 of the Data Protection Act 1998 (the DPA).

Would disclosure of the requested information constitute a disclosure of personal data?

46. The DPA defines personal data as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the of the data controller or any person in respect of the individual."

47. The Home Office argued that the exemption at section 40(2) applied to all the information contained within two funding streams:

- Organised Crime (UKBA)
- VCU (payment for seconded officers)

48. The Home Office explained that these two funding streams relate to the employment of seconded officers and therefore contain personal data.

49. In relation to the Organised Crime (UKBA) funding stream, the Commissioner notes that the withheld information comprises one

³ As set out at Schedule 2 to the DPA

spreadsheet. The Commissioner is of the view that the only withheld information contained within the spreadsheet is the name of one officer who attended a conference. The Commissioner does not consider that the remaining information could identify any individual, therefore it is not personal data and section 40(2) will not apply. The Home Office did not claim reliance on any other exemption in relation to this information. Therefore the Commissioner finds that it should be disclosed to the complainant.

50. In relation to the VCU (payment for seconded officers) funding stream the Commissioner is satisfied that the withheld information is personal data of the seconded officer to whom it relates. That officer can be identified from the information, and it relates entirely to their secondment.
51. In addition, two names and job titles were redacted from the Olympic Safety funding stream grant agreement. The Commissioner is satisfied that this information is personal data. This is because the individuals can clearly be identified by their own names and job titles.

Would disclosure of the withheld information breach any of the data protection principles?

52. The Home Office has argued that disclosure of the information withheld under section 40(2) would breach "*at least one of the first data protection principles*", although it did not provide any further explanation of its position to the complainant.
53. The Commissioner recognises that the Home Office is extremely experienced in handling information requests under the FOIA. The Commissioner is therefore disappointed that the Home Office failed to provide any information to the complainant in support of its application of the exemption at section 40(2). This is a procedural requirement of the FOIA and is dealt with at paragraph 77 below.
54. The Home Office did provide some further explanation to the Commissioner during the course of his investigation. In particular the Home Office argued that disclosure of the information would breach the first data protection principle as no condition for processing could be found.

The first data protection principle

55. The first data protection principle has two main components. They are:
 - the requirement to process all personal data fairly and lawfully; and
 - the requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.

56. The Commissioner's general approach to the first data protection principle is to consider the fairness element first. If the Commissioner finds that disclosure would be fair he will then move on to consider the other elements of the first data protection principle.

Would disclosure of the information be fair?

57. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He has then balanced these against the general principles of accountability, transparency and legitimate public interest in disclosure.

Expectations of the individuals concerned

58. As the Home Office has failed to provide evidence relating to the individuals' expectations regarding disclosure, the Commissioner is of the view that it is difficult to assess fully the expectations of the individuals concerned. However the Commissioner is assisted by his published guidance on section 40 and its application in relation to the personal information of public authority employees⁴. The Commissioner is generally of the view that individuals employed by public authorities should understand that their names may be disclosed in some circumstances. Nevertheless, decisions about disclosure must be taken on a case by case basis, with regard to the circumstances of any particular case.

Consequences of disclosure to the individuals

Organised Crime (UKBA)

59. The Commissioner notes that the withheld information in question is the name of one individual who attended a conference. In the absence of any explanatory information from the Home Office it is not immediately evident whether disclosure of this information would have adverse consequences to the individual concerned. However the Commissioner has taken into account the context of the information, and considers there to be a certain level of risk in identifying an individual in relation to sensitive activities such as tackling organised crime at UK borders.

4

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf

VCU (payment for seconded officers)

60. The Commissioner understands that this withheld information relates entirely to one individual's secondment. The Commissioner's guidance referred to above explains that the disclosure of personnel information is more likely to be fair in the case of senior individuals, rather than junior members of staff. In this case the individual concerned was at a senior rank at the time of the secondment.
61. There is nothing in the withheld information to suggest that the details of this secondment would require protection from public scrutiny (for example, had the post been undercover). Rather, the withheld information merely sets out what appear to be generic administrative arrangements for the secondment, none of which is unusual or sensitive, particularly given the seniority of the individual. Therefore the Commissioner again sees no evidence to suggest that the consequences of disclosure would be adverse.

Olympic Safety (OSCT)

62. The Commissioner notes that the names and job titles redacted related to the representatives of ACPO and the Home Office who signed the grant agreement. This suggests that those individuals were relatively senior, as they had authority to sign the agreement. Again, the Commissioner sees no evidence to suggest that there would be adverse consequences to the individuals were their names and job titles to be disclosed.

General principles of accountability, transparency and legitimate public interest in disclosure

63. The Commissioner's guidance suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. The Commissioner is of the clear view that information relating to an individual's private life (ie their home, family, social life or finances) will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). In this case the information relates purely to individuals' professional lives and not to their private lives.

Organised Crime (UKBA)

64. The Commissioner has already found that most of the withheld information in this funding stream is not personal data and ought to be

disclosed. The Commissioner is of the view that disclosing the non-personal information would be sufficient to meet the requirements of accountability and transparency. The Commissioner does not consider that disclosing the name of the individual who attended a particular conference would provide further accountability or transparency.

VCU (payment for seconded officers)

65. The Commissioner accepts that there is a legitimate public interest in the public being informed as to how public money is spent. Disclosure of information relating to this funding stream would also inform the public as to how the secondment was structured and funded. The Commissioner is of the view that this information relates to the secondment itself, rather than being unique to the individual. However, again the Commissioner is of the view that disclosing the name of the individual would not increase the public's understanding of the secondment.

Olympic Safety (OSCT)

66. Again the Commissioner notes that most of this information has been disclosed, which goes some way towards meeting the requirements of transparency and accountability. The Commissioner considers that the job titles of the individuals in question would inform the public as to who had authority to sign the agreements, although he is of the view that disclosure of the individuals' names would not be necessary to achieve this aim.

Conclusion

Organised Crime (UKBA)

67. The Commissioner finds that it would be unfair to disclose the personal data contained in this funding stream, ie the name of an individual who attended a conference. Therefore the Commissioner finds that disclosure of this information would breach the first data protection principle, and section 40(2) is thus engaged.

VCU (payment for seconded officers)

68. The Commissioner considers that it would not be unfair to disclose the personal data contained in this funding stream, with the exception of the name of the individual. The information relates to a secondment undertaken by a senior individual, but does not contain inherently private information.
69. As the Commissioner has found that it would not be unfair to disclose some of this information he is also required to address the Home Office's

arguments about conditions for processing. The Home Office advised that it considered the only relevant condition to be paragraph 6 of Part II, Schedule 2, to the DPA:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party of parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

70. The Home Office explained that it did not consider the processing to be "necessary" and therefore the condition for processing could not be satisfied.
71. The Commissioner is of the view that there is a significant overlap between considering fairness and the condition for processing at paragraph 6, Part II, Schedule 2. The Commissioner has examined the legitimate interest in disclosure at paragraph 65 above.
72. The Commissioner considers that it is necessary to disclose some information in order to meet the legitimate public interest in the public being informed about how public money was spent on the secondment. However the Commissioner also considers that this can be achieved by redacting the individual's name from the information to be disclosed. As noted above, the administrative arrangements appear to be standard, therefore any intrusion into the individual's privacy is minimal.
73. For the reasons set out above the Commissioner finds that section 40(2) is engaged only in relation to the individual's name, and that the remainder of this information should be disclosed.

Olympic Safety (OSCT)

74. The Commissioner finds that it would be fair to disclose the job titles of the individuals in question, but that it would be unfair to disclose their names. Therefore the Commissioner finds that section 40(2) is engaged only in relation the individuals' names.

Procedural requirements

Section 17(1): refusal notice

75. Section 17(1) states that a public authority wishing to rely on any exemption to refuse a request must issue a valid refusal notice within the statutory time for compliance, i.e. twenty working days. The refusal notice must state the exemption being relied upon by the public authority. Section 17(5) states that a public authority relying on section 14 must issue a notice stating that fact.

76. In this case the Home Office originally issued a refusal notice stating that the request was being refused under section 14 of the FOIA. Following the Commissioner's decision notice FS50380320 the Home Office issued a fresh response. Therefore the original refusal notice was deficient in that it referred to section 14, and did not state the exemptions which the Home Office later sought to rely on.
77. The fresh response, issued on 24 October 2011, cited reliance on section 12. However, on 29 March 2012 the Home Office withdrew reliance on section 12, although it was not until 15 May 2012 that the Home Office issued a fresh refusal notice to the complainant. The Home Office revised its position following an internal review, and again during the course of the Commissioner's investigation.
78. The Commissioner wishes to record his dissatisfaction that this case has been complicated and delayed by the Home Office changing its position each time it reviewed the request. The Commissioner also notes that the Home Office consistently failed to explain its grounds for refusing the request to the complainant. Section 17(1) states that the public authority must explain why any exemption is relied upon, although in some cases the Commissioner understands that this may be rectified at the internal review. In this case however the Home office did not at any time provide the complainant with an explanation of all the exemptions cited.
79. In light of the above the Commissioner finds that the Home Office failed to comply with section 17 of the FOIA in that it failed, at any stage, to issue a refusal notice to the complainant which fully explained all the exemptions relied on to refuse the request. In addition, as noted above the Home Office failed to provide adequate arguments to the Commissioner in support of its position in a number of respects. The Commissioner finds this deeply disappointing, and would expect that the Home Office take steps to ensure that this does not recur in the future.

Right of appeal

80. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

81. 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.
82. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF