

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 April 2020

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

Decision (including any steps ordered)

1. The complainant has requested copies of a number of reports produced by the Extremism Analysis Unit. The Home Office refused the request, citing the exemptions provided by sections 35(1)(a) (formulation or development of government policy), 24 (national security), 27 (international relations), 31 (law enforcement), 38 (health and safety) and 40 (personal information) of the FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 35(1)(a) of the FOIA to refuse to disclose the requested information.

Background

3. The Government's Counter-Extremism Strategy document describes the Extremism Analysis Unit ('the EAU') as having been established "*to support all government departments and the wider public sector to understand wider extremism issues so they can deal with extremists appropriately.*"¹

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470088/518_59_Cm9148_Accessible.pdf

4. The Home Office has explained that the EAU was established in December 2014 to provide analysis of extremism to the UK Government. The focus of the EAU is extremism in the UK, and overseas, where it has a direct impact on the UK and UK interests.
5. The purpose of EAU research is to provide government departments with an understanding of the way extremists work, their ideologies and the harm they cause. This is to enable the EAU to design better and more targeted approaches to dealing with extremists. This includes informing the Government's strategic approach, through its Counter-Extremism Strategy, and more specific interventions.

Request and response

6. On 26 June 2019, the complainant wrote to the Home Office and requested information in the following terms:

"Disclose The Extremism Analysis Unit reports:

- 1) *Extremism on University Campuses - Case Study*
- 2) *The Far and Extreme Right Wing in the UK*
- 3) *Islamist political participation*
- 4) *Update to Islamist political participation*
- 5) *Ideologies of the Far and Extreme Right*
- 6) *Extreme Right Wing Speaking Events*
- 7) *Sikh Marriage Disruptions*
- 8) *Sectarian Extremism in the UK*
- 9) *The Funding of Islamist Extremism in the UK*
- 10) *The Funding of Far and Extreme Right Wing Groups in the UK*
- 11) *Islamophobia and its impact in the UK*
- 12) *Right-Wing Extremism – UK Groups*
- 13) *Islamist Extremism in the UK*
- 14) *Left-Wing Activism and Extremism in the UK*
- 15) *Reaction To Westminster Attack 'One Week On'*
- 16) *What is the relationship between extremism and hate crime?*
- 17) *Manchester Attack "One Week On" Reaction*
- 18) *London Bridge Attack Islamophobic Sentiments – June 2017*
- 19) *London Bridge Attack "One Week On" Reaction*
- 20) *Response to Muslim Welfare Centre Attack June 2017*
- 21) *Reaction to Finsbury Park Attack 'One Week On'*
- 22) *Islamist Terrorist and Extremist Narratives*
- 23) *Parsons Green "One Week On"*
- 24) *Islamophobia in the UK "One Year On" 2016 -2017*
- 25) *Narratives of UK Right-Wing Extremism*
- 26) *UK Sikh Nationalism".*

7. The Home Office responded on 25 July 2019. It said that all of the requested information was exempt from disclosure under section 35 (formulation of government policy) of the FOIA and that sections 24 (national security), 27 (international relations), 31 (law enforcement), 38 (health and safety) and 40 (personal information) also applied to some of the information in scope.
8. The complainant requested an internal review on 25 July 2019. He asked the Home Office to clarify whether it held the requested information and challenged its decision to apply section 35 of the FOIA.
9. The Home Office issued the outcome of the internal review on 6 November 2019. It confirmed that it held the information specified in the request. It upheld its decision to apply section 35 of the FOIA to the information in its entirety and confirmed that it was also applying the exemptions cited in its original response, for which it provided public interest arguments, to withhold the information.

Scope of the case

10. The complainant originally contacted the Commissioner on 9 October 2019, prior to receiving the outcome of the internal review, to complain about the way his request for information had been handled. Having received the internal review, on 6 November 2019 he contacted the Commissioner again, explaining that he disagreed with the Home Office's application of the cited exemptions.
11. The analysis below considers the Home Office's application of section 35(1)(a) to withhold the requested information. The Commissioner has commented on the handling of the internal review in the "Other matters" section, at the end of this decision notice.

Reasons for decision

Section 35 – formulation of government policy

12. The Home Office cited section 35(1)(a) of the FOIA, which states:

"Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy..."
13. The Commissioner's guidance on section 35 states that:

"The purpose of section 35 is to protect good government. It reflects and protects some longstanding constitutional conventions of government, and preserves a safe space to consider policy options in private."²

14. The guidance also states that:

"In general terms, government policy can therefore be seen as a government plan to achieve a particular outcome or change in the real world. It can include both high-level objectives and more detailed proposals on how to achieve those objectives."

15. In order for information to engage the exemption at section 35(1)(a) of the FOIA it must relate to the formulation or development of government policy. The Commissioner employs a wide interpretation of the phrase "relates to", and accepts that any significant link between the information and the formulation or development of government policy is sufficient to engage the exemption.
16. The withheld information in this case consists of 26 reports produced by the EAU. Having viewed the withheld information, the Commissioner notes that each report provides an assessment of extremist activity in a specified area. The Home Office's reasoning for citing section 35(1)(a) was that the reports were produced for the purpose of informing government policy on counter-extremism efforts in these areas, and hence that they relate to the formulation and development of Government counter-extremism policy in these areas. It said that the Government constantly keeps its knowledge of these areas up to date so that it can deal effectively with an evolving threat like extremism. Policy development responds flexibly as the nature of the threat changes. While it recognised that policy development is not seamless, it maintained that, at the date of the request, the withheld information related to the ongoing development of policy on counter-extremism.
17. The Commissioner accepts that this reasoning is borne out by the role of the EAU and by the content of the withheld information, and she has concluded that the exemption provided by section 35(1)(a) of the FOIA is engaged in respect of the withheld information.

² <https://ico.org.uk/media/for-organisations/documents/1200/government-policy-foi-section-35-guidance.pdf>

The public interest

18. The exemption at section 35(1)(a) of the FOIA is qualified by a public interest test, meaning that even where it is engaged, information may only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the withheld information

19. The complainant has not offered any arguments as to why the public interest favours the disclosure of the information.
20. The Home Office said that it recognises that there is a genuine public interest in understanding how Government in general, and the EAU in particular, is tackling and developing policy relating to extremism. It accepts that disclosing the reports would increase public understanding of the risks extremism poses, as well as increasing public confidence in the EAU's ability to develop effective counter-extremism policy by sharing information about the work it carries out.

Public interest arguments in favour of maintaining the exemption

21. The Home Office argued that good government requires a safe space in which to allow policy to be generated through open and frank debate, where a variety of different options can be considered without being subject to public scrutiny, commentary or other outside interference.
22. The Home Office said that the disclosure of the reports in this case would erode the safe space required to develop, inform and implement Government policy on the areas covered by the individual reports. As an example, it said that hate crime is a real threat to public safety and it is important that effective policy is developed and implemented to deal with its causes. Where a subject is controversial, the level of public concern, media interest and general 'noise' in relation to it means that the effects of disclosure of information about it can be inflammatory. In such a context, it is all the more important that public officials are able to carry out the necessary analysis and communicate the results without the distraction that would result from disclosure.

Balance of the public interest arguments

23. In forming a conclusion on the public interest balance in this case, the Commissioner has taken into account the general public interest in the Home Office being transparent and open with regard to the information it holds.
24. That the information in question relates to policy making in the area of counter-extremism is also a public interest argument in favour of

disclosing the information. There is a strong and legitimate public interest in the disclosure of information relating to counter-extremism efforts in order to enhance public knowledge and understanding of the work of the Government in this area. This weighs in favour of disclosure of the information in question in this case.

25. With regard to the arguments in favour of maintaining the exemption, when considering the balance of the public interest in relation to section 35(1)(a) of the FOIA, the Commissioner will always consider it relevant to take into account the public interest in preserving a degree of confidentiality in the policy making process (the so-called "chilling effect"). This is due to the inhibiting effect that the possibility of disclosure could have on free and frank discussions in the future (if those involved are not confident that their contributions would remain confidential where appropriate), and the consequent harm to the quality of the policy making process.
26. The Commissioner recognises that the argument concerning the preservation of a safe space within which to carry out the policy making process is, in general, valid on the grounds that this will assist in the open discussion of all policy options, including any that may be considered politically unpalatable. However, the weight that this argument carries in each case will vary, depending on the circumstances.
27. In this case, the Commissioner takes into account that the information in question relates to counter-extremism; a highly sensitive and controversial area of government policy making, which remains under constant review. The Commissioner recognises that there is a very strong public interest in the preservation of a safe space in which to carry out policy making on counter-extremism related matters. This is in order that policy consideration can be uninhibited and deliver the best outcomes in this vitally important area.
28. The age of the information in question and the stage reached in the policy formulation process is relevant when considering safe space arguments. The reports in this case were created between one and four years prior to the date of the request. It could be argued that the age of this information indicates that the policy formulation process relating to it will have been completed by the time of the request and so the preservation of the safe space was no longer necessary. The Commissioner, however, recognises that policy formulation in relation to counter-extremism is an ongoing process and accepts that the reports were still relevant to that process at the time of the request. Whilst this does not mean that there is an indefinite requirement for this safe space, the Commissioner accepts that there remained a public interest in preserving that space at the time of the request. Preserving the safe

space for this policy formulation process is a valid and weighty factor in favour of maintenance of the exemption in this case.

29. As to the specific content of the reports, they give a detailed analysis of activity in each of the areas covered. The Commissioner accepts that this content is of great sensitivity, particularly in terms of how individuals involved in the activities are likely to react to this content, and how others who object to those activities may react. The relevance of this to the interests that section 35(1)(a) is intended to protect (effective government policy making) is that the Commissioner also accepts that for analysis conducted by the EAU to effectively inform the policy making process (which she considers is in the public interest) it must be full and frank. The Commissioner further recognises that the preservation of safe space for this work will assist in ensuring that these assessments continue to be full and frank, and she counts this as a significant public interest factor in favour of maintaining the exemption.
30. In conclusion, the Commissioner has recognised that there is a clear public interest in the disclosure of the withheld information, owing to its subject matter. She has also, however, recognised that the public interest in the Home Office being able to engage in counter-extremism policy making effectively, and without its work being undermined or disrupted, carries more weight. The view of the Commissioner is that, in this case, the public interest in avoiding that disruption tips the balance in favour of the maintenance of the exemption.
31. Her decision is, therefore, that the Home Office was entitled to refuse to disclose the requested information by virtue of the exemption at section 35(1)(a) of the FOIA.
32. Since the exemption at section 35(1)(a) of the FOIA applies to the information in its entirety, it has not been necessary for the Commissioner to consider the other exemptions cited by the Home Office.

Other matters

33. There is no obligation under the 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 the 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.
34. 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. In no case should the internal review exceed 40 working days.

35. The complainant asked for an internal review of the handling of his request on 25 July 2019 and the Home Office provided the outcome on 6 November 2019, 73 working days later.
36. 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.
37. The Commissioner further notes that the Home Office failed to respond to her initial enquiries about the complaint, and that she was forced to issue an Information Notice, requiring it to do so.
38. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"³ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"⁴.

³ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁴ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

39. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

40. 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.

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

Signed

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF